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THE
CASE
OF THE
DUTCH SHIPS,
CONSIDERED.

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ADVERTISEMENT.

EVERY Purpose of the following Considerations will be answered in a Cause so national and important, as the Subject of them is, if it should be judged, upon a Perusal of them, that the Justification of the Conduct of Great-Britain may rest safely upon any one single Argument advanced in them; or if it should be thought, that the *joint* Result of the whole Reasoning establishes the Proposition which is intended to be maintained.

The Quotations which are placed in the Margin, and which are unnecessary in themselves to support or recommend the Principles of common Sense, are introduced merely as Authorities, disinterested and previous to the Object in Dispute, from Foreigners to Foreigners.

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**THE
CASE
OF THE
DUTCH SHIPS, considered.**

IN the present War between England and France, the Subjects of Holland have no Right to cover the Property of the Enemy of England, going to, or coming from the Colonies of that Enemy, directly; nor indirectly to do it, thro' the Medium of the Dutch Colonies; nor to carry to the Colonies of France directly, nor indirectly, any Commodities, altho' Neutral Property, which have a Tendency to support the Enemy.

They have no such Right, by the common Principles of Neutrality.

They have no such Right, by virtue of subsisting Treaties.

By

By Writers upon Subjects of this Nature, of every Country, and of the highest Authority, and by the common Usage of all Nations, it has been constantly DETERMINED,

That, in a War between two Nations, each Enemy may lawfully take, seize, and possess himself of the Property of his Opponent, wherever it can be found.

From this Principle it follows, especially considering how widely Commercial Interests are diffused, that it is an actual Impossibility for two great, and Maritime Powers, to engage in a War, but the Intercourse of all the rest must be liable to be disturbed.

In such a Case, the Advantages of a Neutrality are necessarily mixed with Inconveniences which must be submitted to, or the Neutrality must be renounced.

If the Goods of Enemies may be lawfully seized wherever they are, then it follows, that they certainly may be seized on-board the Ships of Neutrals *.

Every Ship going to, or coming from, the Port of an Enemy, is strongly attended with a Presumption of Enemy's Property.

Neutrals cannot continue Friends, if they protect the Enemy, or Goods of Enemies; because

* How far the States of Holland themselves have carried this Doctrine in their own Conduct towards Neutrals, confiscating both Ships and Cargoes, is to be seen from the Placards quoted in the Appendix to this Case.

because an impartial Conduct is the very Idea of Neutrality.

It is incumbent upon Neutrals to remove a Presumption that is against them, by a Justification of themselves, and by submitting to a proper Enquiry, without Fraud, or Resistance.

Neutrals therefore may be justly *detained*.

Neutral Property may be *confiscated* as illegal in its Destination from relative Circumstances *.

It is relative Circumstances, which, by the constant Practice of Nations, have made all Commodities, which are destined for Places belonging to the Enemy, blocked up,

* 'Magnum sane aliquando momentum in bellis habent etiam res minimi momenti, si hostis laboret inopia; nec rerum istarum aliunde copia sit. Sæpe urbes munitissimæ ob herbae istius combustibilis, vel vini adusti inopiam fecerunt, & famem facilius tolerare militem præsidiarium quam rerum illarum desiderium. Quis ergo neget? tum cives, tum exteros male mereri de Republica, qui talia suppeditant hostibus nostris, sine quibus facile adigi ad deditiōnem potuissent. Adeo verum est, belli temporibus, commercia non modo inter hostes cessare, verum etiam amicis & neutrarum partium gentibus non promiscue permitti negotiationem cum hostibus, [nisi sibi hæ securitatem à belligerante utroque stipulentur.] Qum enim hosti in hostem in infinitum omnia liceant quæ ad debellandum illum sunt necessaria, licebit sane & gentem amicam impedire quo minus hosti res, quibus validior instructiorque ad bellum gerendum fiat, advehere possit, seu jam supra vidimus.

' Sin hostes nostri cum gente extera nobisque amica negotiantur, eo minus dubitare licet, quin fas nobis esse oporteat, illa commercia turbare, & id agere, ne quid ex illis lucri ad hostes nostros redeat.' Heinneccius. Sylloge 11. Exercitat. 30. §. 12.

up, or invested, to be considered as prohibitable in their Nature, or in other Words, contraband; because they tend to uphold the Enemy under Circumstances of Distress.

Commodities, the Property of Neutrals, having this Tendency, and destined for the Colonies of the Enemy, which are the Object of the War, and under Circumstances of Distress, are therefore contraband.

Ships, the Property of Neutrals, may be confiscated upon different Accounts; upon one, in view of Punishment of bad Faith, for a Breach of Neutrality in carrying contraband; upon another, when sailing under the special Licence of the Enemy; as the adopted Property of the Enemy.

It appears, therefore, that the Subjects of Holland have no Right to trade with the Enemies of Great-Britain, without being subject to Enquiry at least, nor in the unlimited Manner in which they now pretend to do it; so far as the Principles of mere Neutrality, and of the Law of Nations, are concerned.

Are they then privileged by subsisting Treaties?

The whole Argument in their Favour is rested intirely upon the Words of the Treaty of December $\frac{1}{1}$, 1674.

But, first, the Words of this Treaty do not establish this Privilege without Exception.

2dly, The Words * of this Treaty must be judged to take their Meaning from the Things in view, and in the Intention of the Treaty.

3dly, The Question is not to be grounded solely upon this Treaty, but all subsisting Treaties must be referred to.

Lastly, All Duties required by the Laws of Neutrality, and by subsisting Treaties, must have been discharged by the Ally, who claims a Privilege under any Treaty.

*Article I. of the Treaty concluded at London,
December $\frac{1}{2}$, 1674, between Great-Britain,
and the United Provinces.*

*From the Words of
the 1st and 11d Arti-
cles taken together, and
with their natural and
necessary Relations to
each other, the Sense
of the whole appears
to be.—*

*That Free Traffic
in all Kingdoms, Coun-
tries, and Estates shall
be allowed to the Neu-
tral.—*

But

‘ It shall, and may Article I.
be lawful, for the
Subjects of the Lords
the States, with all
Freedom, and Safe-
ty, to sail, trade, and
exercise all manner
of Traffic in all other
Kingdoms, Countries,
and Estates, which
now are, or at any
time hereafter shall
be at Peace, Amity,
or Neutrality, with

B 2 ‘ the

* ‘ Sensus non vana nominum vocabula amplecti oportet.’
L. 4. Cod. de Const. Pec. tit. 18.

the Lords the States,
so that they shall not
be any way hinder-
ed, or molested in
their Navigation, or
Trade, by the Mili-
tary Forces, or Ships
of War, or any other
Vessels whatever, be-
longing either to the
said King, or his Sub-
jects, upon account,
or under pretence of
any Hostility, or
Quarrel now subsist-
ing, or which may
hereafter happen,
between his said Ma-
jesty, and any other
Princes, or People
whatever, which are,
or shall be in Peace,
Amity, or Neutra-
lity, with the said
Lords the States.'

Article II.

*But this Free Traf-
fic aforesaid in all King-
doms, Countries, and
Estates, allowed to the
Neutral, shall extend to
all Commodities which
might*

Art. II. 'Nor shall
this Freedom of Na-
vigation and Com-
merce be violated,
or interrupted by
reason of any War ;
but

might be carried in time of Peace.—

Carried † whither, and from whence?

To and from all Kingdoms, Countries, and Estates.

Carried by whom ‡?

By the Parties stipulating.

Contraband Goods only excepted from coming within the Extent of such Free Traffic.

' but such * Freedom
' shall extend to all
' Commodities which
' might be carried in
' time of Peace; those
' only excepted, which
' are described, under
' the Name of Con-
traband Goods, in
' the following Ar-
ticle.'

The Argument therefore stands thus :

As Contraband is only excepted, from coming *within the Extent* of such free Traffic to and from all Countries, Positively; so all that goes *beyond the Extent* of the Line drawn, is also excepted, Consequentially.

The Product coming from French Colonies to Europe, are Commodities which could never yet be lawfully carried by Dutch Ships *in time of Peace*, directly nor indirectly; nor can it be shown that they will

* The Words of the Treaty are in Latin, as follows :
‘ Sed ad omnes merces, (i. e. mercaturæ objecta transpor-
tanda) quæ in Pace subvehentur,’ *which shall be carried in*
time of Peace, ‘ se extendet, exceptis solūm,’ (not *solis*, but
solummodo) ‘ iis quæ Articulo proximo,’ &c.

† Vide Objection I. of the Dutch Expositor, at the End of this Case.

will hereafter so be carried: Therefore they cannot be carried *now*, by all the Words of this Treaty.

The same Reasoning holds in the Case of Goods carried by Dutch Ships directly or indirectly, to the French Colonies.

For greater Clearness, to repeat Part of the Argument again, in other Words: The Terms of both Articles contain an Affirmative with a positive, particular Exception.

Affirmative.—What may be carried to and from all Countries in time of Peace, may be carried in time of War.

Positive, particular Exception.—Contraband only excepted.

And they contain a Negative by Inference, with an universal Exception.

Negative by Inference.—What may not be carried to and from all Countries in time of Peace, may not be carried to and from all Countries in time of War.

Universal Exception.—Only Contraband is always excepted from being carried.

If this is rightly stated; then the Contents of these two Articles do lead and controul all other Articles, whatever may be determined to be the Meaning of,

Article VIII. *But, in this Article*
the Sense is, All the
Objects of Commerce,
free, Art. VIII. 'All that
 which shall be found
 put on-board Ships
 be-'

free, as in the afore-
said Extent, and Things
excepted are expressed ;
which Things being
stopped or taken, all
Things in general and
special shall be done ac-
cording to the Spirit,
View, and Intention of
the Articles going be-
fore, as well as ac-
cording to the Letter
of them.

belonging to the
Subjects of the Lords
the States, shall be
accounted clear and
free, altho' the whole
Lading, or any Part
thereof, by just Title
of Property, should
belong to the En-
emies of his Majesty
(except always con-
traband Goods *)
which being inter-
cepted, all Things shall
be done, according
to the Meaning and
Direction of the
foregoing Articles.'

It appears, therefore, from all the Words,
taken together, of the foregoing Articles,
and from their natural Construction, and
Inference, that the Privilege, in the Ex-
tent, and Manner claimed by the Dutch
Traders,

* The Words of the Treaty are : ' Quibus (i. e. rebus)
interceptis (i. e. vel captis, vel detentis) omnia (i. e. res
omnes) & singulorum omnia (i. e. intercepta, vel capta, vel
detenta) ex Articulorum præcedentium, Mente & præscriptio
fiant.'

' Quibus,' refers to all that went before ; scil. ' Quicquid
à subditis Dominorum Ordin. General. impositum esse depre-
bendetur : ' totum id, ' omne id quod navibus : ' totum oneris,
eiusdem Pars aliqua : ' (Mercibus Contrabandis), &c.

Traders, is not given by special Words ; nor by Construction.

If it is not given by special Words, but by Construction, then it appears that the Words are *equivocal*, and *dubious* *.

Where Words are equivocal, and dubious, a Prohibitory Construction is to be presumed for, against a Construction that is Permissive.

Extraordinary Stipulations are not to be interpreted in the utmost Latitude, where they are capable of a Construction to the contrary ; but are to be understood rather to contain a tacit Limitation †.

But an extraordinary Privilege, that subverts the common Principles of the Law of Nature and Nations, and which is ruinous in its utmost Extent of Construction, is, *stricti Juris*, beyond all other Privileges ; nor can it be given, but by special Words only.

Treaties are liable to tacit Exceptions, notwithstanding Words seeming to be special.

For, to judge of Words, we must judge of Intentions.

Intentions are to be judged of from existing Circumstances.

It

* ' Semper in obscuris quod minimum est sequimur.' L. 50. Dig. tit. 17. §. 9.

† ' Quæ extendit Interpretatio difficilior procedit quam quæ arctat.' Grotius de Jure Belli & Pacis, lib. 2. c. xxvi. par. 20. §. 1.

It has been disputed, whether *any Treaty* whatever is of eternal Obligation; but that its Obligation extends no farther than to, *Rebus sic stantibus* *; that is, to the same Objects existing, in a future time, as they existed, and were in view, at the time of making the Contract.

But a Commercial Treaty, which is very different in its Objects, and Consequences, from a Treaty of Peace, extends no farther in its Obligation than to the general State of Commerce in existence, and view at the time of contracting.

What was not in being, nor probable to be foreseen, could not be in the View of the contracting Parties. What was not in view of the contracting Parties, was not in their Intention to make part of the Obligation.

Objects apparently ruinous to either of the contracting Parties, had they been existing, or probable to be foreseen, would have been verbally excepted †.

But

* Vide the Answer of Queen Elizabeth to the Hanse-Towns and States, 1595. Camden.

N. B. Seneca, who had no view to Political Cases, but as reasoning upon Moral Obligation, says, ' quicquid mutatur, libertatem facit de integro consulendi; ' and proves it by many undeniable Examples in private Life, where a Change in the promising Person, or Circumstances relating to him, alters the Obligation of the Contract. *De Beneficiis*, l. 4. c 35, 39.

N. B. The Case of Queen Elizabeth was not relative to Peace and War, but to Privileges of Commerce, and to Subsidies.

† ' Quia casus nec prævideri omnes possunt, nec exprimi, ideo libertate quadam opus est eximendi casus, quos, quis

But Objects arising, *ex posteriori*, not from the common Course of Commercial Affairs, but from the mere *temporary* Act of Fraud and malicious Intention of the Enemy of any one of the contracting Parties, for his own Benefit and Preservation, but to the Detriment and Destruction of his Opponent, these Objects arising, *ex fraude* *, and, *ex posteriori*, are certainly, by every equitable Construction, excepted.

For, altho' it be true, that, *Res inter alios acta non nocet*; that ' what is transacted between two Parties does not prejudice a Third no ways concerned or interested;'

Yet, if it prejudices, the Rule is reversed; and then the Rule is, *Res inter alios acta non juvat*; that ' what is transacted between two Parties, but prejudices and concerns a third Party interested, shall not benefit either of the two Parties transacting, so far + as the Third is prejudiced.'

The

‘ qui locutus est, si adesset (*i. e.* si casus adesset) eximeret.’
Grotius de Jure Belli & Pacis, l. 2. c. 26. par. 26.

* See the Marine Regulations of France in the Appendix, Articles X. and XI. how little the French will suffer any Advantage to be taken of Transactions between the Neutral and the Enemy, while the War is depending, as carrying with them a violent Presumption of Collusion.

‘ Circumventio alterius, alii non præbet Actionem.’ L. 5. Dig. tit. 17. §. 49.

† ‘ Qui utitur Jure suo nemini debet facere injuriam.’ L. 50. Dig. de Reg. Juris. l. 1. §. 12. Dig. de Aqu. & Aqu. Pluv. Arcend.

The Trade to the Colonies of each Nation in Europe was shut up to the Subjects of every other Nation by fundamental Laws of each particular State, Inviolably, as it was thought, at the time of making the Treaty of December $\frac{1}{1}$, 1674.

The Opening a Trade to the Colonies of France, *flagrante Bello*, is a Transaction between France, and the Subjects of Holland, to the Prejudice of England.

There was a Defect of every such Object at the time of making the Engagement in question between England and Holland.

This Trade, therefore, *ex post facto* *, cannot be opened in time of War to the Subjects of Holland; so as for them to carry it on by virtue of the Engagements subsisting between England and Holland; prior not only to the Existence, but even probable Existence of this Object.

The Absurdity † of an Object, no less than the Defect of an Object, proves a Defect of Intention.

C 2

It

* * Si post ex intervallo aliquid extra naturam contrarius conveniat, ob hanc causam agi non potest, propter eandem regulam, "ne ex pacto actio nascatur, quod & in omnibus bona fidei Judiciis est dicendum." L. 2. Dig. 14. §. 7. De Pactis.

† ' *Restringens Interpretatio* extra verborum significationem quæ promissionem continent, aut *ex defectu* petitur Originalis voluntatis, aut *ex casus emergentis* repugnantia cum voluntate. *Defectus* voluntatis originarius intelligitur ex absurdio quod alioqui evidenter sequeretur, ex cessatione rationis, quæ sola plenè & efficaciter movit voluntatem, vel *ex materiae defectu*.' Grotius de Jure Belli, l. 9. c. 16. par. 22.

It never was, and never could be, the Intention of any contracting Parties, to subject the Meaning of their particular Contracts to the accidental Interpretation of their own Enemy. It was not therefore the Intention of either England or Holland.

By the Treaty of December $\frac{1}{1}$, 1674, was intended a Right to trade with the Enemy in time of War in such Places, and in such a Manner, as either of the contracting Parties might do by the Laws of the Enemy's Government, which are standing Laws in time of Peace.

If it is asserted, that by the Treaty of December $\frac{1}{1}$, 1674, was meant a Right to trade with the Enemy in every Place and in every Manner, *possible*, which it shall be in the Enemy's Inclination to allow in time of War;

Then it is asserted, that it was the Intention of the contracting Parties to bind themselves * by the Act of their own Enemy, to their great Prejudice, and perhaps to their Destruction; which cannot be admitted in Equity.

But whatever Privilege of free Commerce is conceded by the Treaty of December $\frac{1}{1}$, 1674,

* To see the Absurdity of this Argument and Assertion, it is proper to refer the Reader to the very Words of the Dutch Expositor himself, Objection IV. at the End of this Case.

‘Non credendus est quisquam ad magnum suum incommode dum se voluisse obligare.’ Grot. de Jure Belli. L. 9. c. 16. par. 26.

1674, it was intended to be conceded to the State of the contracting Party, and to its Subjects, generally.

If the Enemy, for his own immediate and temporal Interest, pleases to give to certain particular Persons, Subjects of any neutral Power, a Licence to trade to his Colonies; yet nevertheless, if an Enemy does not give this Liberty, as a general and *constant* Privilege, to the neutral State itself, but confiscates all such Ships of theirs as are found trading thither without that Licence, then that Licence is special and personal.

Therefore that special and personal Licence does adopt all those who have it and their Property in the View of Subjects of that Government which grants the Licence.

A Dutch Ship trading to the Colonies of France, without a Licence from the French * Government, is confiscated, as good Prize to French Captors.

Therefore all Dutch Ships so licensed, are adopted French Ships.

The Privilege of the Treaty of December ¹¹, 1674, is minutely reciprocal in its Degree of Extent.

† The manner in which a reciprocal Privilege is enjoyed in the first Instance, establishes a Precedent for its Extent in a second Instance.

A

* These Licences are signed by the King himself, and differ greatly from the common Passes granted by the High-admiral of France, for Voyages in Europe.

† 'Semper in stipulationibus, et in cæteris contractibus id sequimur quod auctum est.' L. 50. Dig. tit. 17. §. 34.

A Precedent established is unalterable, or its Degree of Reciprocity is destroyed.

After the Conclusion of the Treaty of December $\frac{1}{1}$, 1674, Holland continuing the War with France, the Subjects of Great-Britain had the Benefit of a free Trade with France, till the Year 1678, when the Peace of Nimeguen was concluded.

But the Subjects of Great-Britain have not, at any time, enjoyed the Benefit of this Privilege in the Extent, which the Subjects of Holland now claim it for themselves.

The Subjects of Great-Britain never traded to the Colonies of France.

If Great-Britain *has* enjoyed a more extensive Benefit from the Privilege, in a former Instance, than she *will* now allow to Dutch Subjects, Holland *has been* injured.

If Dutch Subjects *shall* enjoy now a more extensive Benefit from the Privilege than Great-Britain *has* enjoyed in a former Instance, Great-Britain *will* be injured.

Such free Trade, as the Subjects of Great-Britain enjoyed at *that* time, is reciprocally to be permitted *now* to the Subjects of the States-General, and no other.

But the Intentions of a Treaty do not more subject it to a restrictive Interpretation, than it is restrained by other subsisting Treaties, equally in force.

That

That a Treaty should not subsist in force, it must be abrogated, specially *, by a subsequent Treaty.

The Treaty of February $\frac{9}{12}$, 1673-4, is not abrogated by any Treaty.

All Treaties, specially revived, draw their Force from the Act of Revival.

No Treaties therefore, which are revived, have greater Authority, as being prior, or posterior, in order of Time, but are as one Treaty from the Act of Revival.

The Treaty of February $\frac{9}{12}$, 1673-4, is a revived Treaty.

The Force of an Act of Revival is best seen from the Words of the Treaty of Seville, acceded to by the States-General, November 21, 1729.

Article I. ' All former Treaties, and George II.
 ' Conventions of Peace, and of Commerce, 1729 .
 ' concluded between the contracting Par-
 ' ties, respectively, shall be, as they hereby
 ' are, *effectually renewed*, and confirmed, in
 ' all those Points which are not derogated
 ' from by this present Treaty, in *as full*
 ' *and ample manner as if the said Treaties*
 ' *were here inserted word for word*, the said
 ' Parties promising not to do, or suffer any
 ' thing to be done, which may be *contrary*
 ' *thereto directly, or indirectly.*'

Not

* Thus the Treaty of October 29, 1709, between Great-Britain and the States-General, is abrogated by express Words in the Treaty of January $\frac{9}{12}$, 1712-13.

Not only by the last mentioned Treaty of Seville, but by the Article, Hague, December 30, 1675, which is *relative* to and *explanatory* of the Treaty of February $\frac{1}{2}$, 1673-4, as of a Treaty subsisting in full

James II. Vigor, but by the Preamble to the Treaty 1685. of Windsor, August 17, 1685.

William III. By the Treaty of Whitehall, August 24, 1689. 1689, Article II.

Anne 1712-3. By the Treaty of Utrecht, January $\frac{1}{2}$, 1712-13.

George I. By the Treaty of Westminster, February 1715-16. 6, 1715-16, Article II.

George II. By the Treaty of Westminster, May 27, 1728. 1728.

George II. By the Treaty of Vienna, acceded to by 1731-2. the States-General, February 20, 1731-2.

Charles II. By all these Treaties severally, the Treaty 1673-4. concluded between Great-Britain and the States-General, February $\frac{1}{2}$, 1673-4, is specifically named, approved, and confirmed.

The secret Article of this Treaty of February $\frac{1}{2}$, 1673-4, is as follows:

‘ Neither of the said Parties shall give,
 ‘ nor consent that any of their Subjects, or
 ‘ Inhabitants, shall give any *Aid, Favour, or*
 ‘ *Council*, directly, or indirectly, by Land,
 ‘ or by Sea, or on the fresh Waters, nor
 ‘ shall furnish, nor consent that the Sub-
 ‘ jects and Inhabitants of their Dominions
 ‘ and Countries, shall furnish any Ships,
 ‘ Soldiers,

• Soldiers, Mariners, *Provisions, Money,*
 • Instruments of War, Gun-powder, or any
 • *other thing necessary* * for making War, to
 • the Enemies of the other Party; and the
 • present Article shall have the same Force
 • and Virtue, as if it had been included in
 • the same Treaty.

This Treaty of Peace and Alliance, February $\frac{1}{2}$; 1673-4, was the Basis and Preliminary to that of Commerce, December $\frac{1}{2}$, 1674, the present Object of Contention.

Both Treaties are considered in the View of one Treaty by the Article, which is explanatory of them both, Hague, Decemb. 30, 1675. Both are equally subsisting, and in force: Yet each Treaty being contradictory to the other, how is the Question to be determined?

A positive, but permissive Article, must yield to a contrary Article that is equally positive, but negative.

If we determine more favourably, the Point in Debate between them must be *left open to common Principles of Neutrality*, as undecided by equally subsisting Treaties; and in respect of Things nominally specified

D in

* The Words of this Treaty are in Latin, as follows, and point out a relative Contrabandity, (if I may use such an Expression) from Circumstances of Necessity.

‘ Neque subministrabit, nec subministrari consentiet, victu-
 ‘ alia, aut ulla alia, ad bellum faciendum necessaria (necessary in
 ‘ order to make War) hostibus alterius partis.’

In both Treaties, those Articles which are in their Terms mutually destructive of each other, must be withdrawn out of the Question, as necessarily * null and void.

Article IV, *Treaty, December 1st, 1674,* *subsisting.*

Provisions, Gold, and Silver, coined and not coined, all Sorts of Metals and Naval-stores — — — — — *To be carried free to the Enemy of either Party.*

Secret Article Treaty, Feb. 1st, 1673-4, not abrogated, but revived and subsisting.

Victuals, Money, and any other thing (besides Instruments of War) necessary for making War, to the Enemy — — — — — *Not to be carried to the Enemy of either Party,*

The Dutch claim an Extension of carrying free, not only the above Commodities, but all others, being Enemy's Property, in every Place and Manner *possible*, at any time, by a pretended Construction of the Words of the Treaty of Commerce, December 1st, 1674.

The Treaty of Peace and Friendship, February 1st, 1673-4, founds the Essence of all Alliance, positively, upon no Aid, nor Favour,

* 'Ubi pugnantia inter se juberentur, neutrum ratum est.' L. 50, Dig. tit. 17. §. 183.

Favour, nor Counsel, being given to the Enemy of the other Party.

If the Construction and Extent claimed, is admitted, all Confidence, as between Allies, is destroyed; the Enemy enfeebled is favoured, aided with Counsel, and supplied with Means, to carry on a * long and bloody War; the Trade of his Colonies is secured, which are the Object of the War; the Mariners and Vessels before engaged, of Necessity, in the Business of Commerce, are employed to complete the Armaments of the State, and the Ally of the Neutral may be ruined, beyond Recovery, although now superior.

But this constructive Privilege of covering the Property of the Enemy, in so extensive and ruinous a Manner, is contrary to a positive Declaration of a subsisting Treaty, and is granted in special Words by no Treaty; therefore we must reject the Claim to this Extension, or we must allow that which is least supported.

Whatever is the Meaning of the Treaty of December $\frac{1}{1}$, 1674, the same is the Meaning of the explanatory Article of August 30, 1675, as to the Object of Commerce out of Europe, which is the Question.

If the Treaty of December $\frac{1}{1}$, 1674, means only Freedom of Traffic *in Europe*

* See p. 24 of this Case, and the Note.

with the Enemy, then the Explanatory-article means only a Freedom of Traffic, from an Enemy's Port to an Enemy's Port, in Europe.

No Argument therefore can be drawn in favour of the Privilege, as claimed by the Dutch in its Extent, of a Free-trade to the Enemies Colonies in time of War, from this Article, independently of the Treaty of December 11, 1674.

The same Reasons that hold against the Extension of the Privilege without special Words, in the Treaty, hold against the Extension of the Privilege without special Words, in the Article.

The Explanatory-article itself proves against any Privilege to be extended by Construction, without special Words.

If an additional Explanatory-article was absolutely necessary to extend the Freedom of Commerce, permitted in general Words by the Treaty, in one Step, then is another specifical and additional Article equally necessary now, to extend it still farther in another Step.

The last Question remains :

In the present War between England and France, have the Subjects of Holland discharged their Duty, in the Relation which they bear to England as Neutral-friends and Allies, so as to entitle them to any Benefit of Neutrality, or to the Privileges

• leges that are supposed to belong to them,
• by any Treaty?"

The Privilege of Free-commerce with the Enemy does not extend by Treaties to America.

The Dutch are therefore upon the Footing of mere Neutrals in America,

Neutrals not carrying Enemy's Property, nor Contraband, nor lending their Names with a fraudulent View to conceal; nor doing any Act that is fraudulent in its Intention or Appearance, are not liable to any Confiscation or Expences attending the Contestation of their own Property: But otherwise the Expences, attending the Proofs, necessary to remove the Presumptions that arise against them, from their own Act, ought to be charged to their Account, although they should be released.

And no Conclusion is to be drawn from a Number released, that therefore they were unjustly detained, or charged with the Expences of Contestation.

But the Dutch have lent their Names to French Subjects to cover French Property.

The Dutch sailing to French Colonies, have feigned * Voyages to their own Colonies, to defraud and frustrate the Subjects of England, in the lawful Pursuit of their Right,

* ' The Precaution taken of feigning Expeditions to our own Colonies,' Dutel Exposition, p. 9.

Right, and in the Prosecution of a just War.

The Dutch have carried Provisions from British Ports to the Enemy, under pretence of Property destined to Neutral-ports *.

The Dutch have suffered their Territory to become the Channel and Repository of the Commerce, and even the Arsenal of Military-stores and Necessaries of the Enemy of England ; and have aided and counselled the Enemy, in every Method that might complete his Voyages through their Medium, with Safety, as they hoped, to him, and Impunity to themselves.

The Dutch have failed to and from the Enemy's Colonies, in the View of naturalized or adopted French.

Special Permissions from the French Government have suspended in their Favour, *flagrante Bello*, the established and fundamental

* It is certain that the Dutch Trade, to and from the Colonies of France under these Circumstances, is a Contraband-trade, although many of its Objects are of a promiscuous Nature, if these Circumstances are parallel to this Decision of Grotius.

‘ In tertio illo genere *usus* *Ancipitis*, distinguendus erit *Belli Status*. Nam si tueri me non possum nisi quæ mittantur intercipiam necessitas jus dabit. sed sub onere restitutionis, nisi causa alia accedat (scilicet, hæc causa quæ sequitur.)
 ‘ Quod si juris mei executionem rerum subvectio impedit, erit, idque scire potuerit qui advexit, ut si deditio vel *Pax* expectabatur tenebitur ille, ut qui debitorem carceri exemit, aut fugam ejus in fraudem meam instruxit. Et ad damni dati modum *res quoque ejus* capi, et dominium earum debiti consequendi causa quæri poterit.’ *De Jure Belli*, L. 3. c. 1. par. v. §. 3.

fundamental Laws of the Enemy's State in time of Peace, without which they could not sail to the French Colonies, but would be condemned when taken, as Prize to French Subjects.

So far therefore as any one of these Circumstances is true, so far are particular Dutch Subjects liable to all Inconveniences resulting from every Act of their own, inconsistent with the Idea of Neutrality, with the Law of Nations, and the Rights of true, unmixed Hollanders.

By the subsisting Treaty of Westminster, March 3, 1677-8, of perpetual Alliance and Defence, renewed and confirmed by all the Treaties which renew and confirm the Treaty of February ¹⁹, 1673-4, there is stipulated between the King of Great-Britain, for himself and Successors, Kings of Great-Britain, and the States-General, Confederacy with the Confederates, and Enmity with the Enemies of each other, as follows :

Article IV. [‘] The mutual Obligation of ^{The Fact.}

‘ assisting and defending one another is to be
 ‘ understood, and doth extend to the Con-
 ‘ servation and Maintenance of his Majesty
 ‘ and the said Lords the States-General,
 ‘ their Countries and Subjects, in all their
 ‘ Rights, Possessions, Immunities, and Li-
 ‘ berties, (as well in respect to Navigation
 ‘ as Commerce, and every thing else, both

The Fact. ' by Sea and Land, which shall be found
 ' to belong to them by common Right, or
 ' have been acquired by Treaties already
 Minorca in- ' made, or to be made in the manner
 vaded and ' taken.
 Avowed and ' (aforesaid) *with and against* all Kings and
 notorious ' Princes, Republicks and States. So far
 Preparations ' forth, that if his Majesty, or the said
 ' Lords the States, in prejudice to the said
 ' Tranquillity, or present or future Neutra-
 ' lity, shall hereafter be *attacked*, or in any
 ' manner whatsoever *disturbed* in the Pos-
 ' session and Enjoyment of their Estates,
 ' Territories, Towns, Places, Rights, Im-
 ' munities, and Freedom of Commerce,
 ' Navigation, or any thing else, which his
 ' Majesty, or the said Lords the States-
 ' General now enjoy, or shall hereafter
 ' enjoy by common Right, or by Treaties
 ' already made, or which may be made as
 ' aforesaid; his Majesty, and the said Lords
 ' the States-General, as soon as they are in-
 ' formed of it, or required thereto by each
 ' other, shall do all they possibly can, con-
 ' jointly to terminate the Troubles or Ho-
 ' stilities, and procure Reparation to be
 ' made for the Loss and Injuries done to
 ' one of the Allies.'
 Article V. ' And in case the said *Attempt*
 ' or *Trouble* be seconded by an open Rup-
 ' ture, that Party of the two Allies, who
 ' is not attacked, shall be obliged to break
 ' with the Aggressor in *two Months*, imme-
 ' diately

diately after the Party that is already at The Fact.
 Rupture shall *require* it; during which
 time he shall use all his Endeavours by
 his Embassadors, and other Ministers, to
 mediate a just Accommodation between
 the Aggressor and Disturber, and the that they
 Party first attacked or molested; and yet
 shall *in the said time* give powerful Assist-
 ance to his Ally, such as shall be agreed
 upon between his Majesty, and the said
 Lords the States-General; the which,
 though there had been no mention made
 of them in this Article, shall be kept
 and observed, as if they had been in-
 serted and set down therein. It being
 already left to the Choice of that Party
 of the Allies, which shall be at Rupture,
 to continue to enjoy the Benefit of the
 said Succours, in case the Conjunction of
 the Times, and the State of his Affairs
 shall make him prefer the *Effect* before
 an open Rupture of his Ally with the
 Aggressor.

Separate Article.

Demanded, not com- The States to send
 plied with, nor any six thousand Foot
 Act done, at the time well armed, with
 of Requisition toward twenty Men of War
 complying, or even to well fitted up and
 ward shewing an Incli- victualled.
 nation to comply.

Besides the Stipulations of this Treaty, *Requisition being* made, Succours as above are to be sent to secure the Succession of the House of Hanover, *in consequence of the Requisition.* Treaty of Utrecht, Jan. $\frac{1}{3}$, 1712-13.

Anne 1712 3. Article XIV. 'The States-General shall, ' at the Request of her Majesty, &c. furnish ' the Succours hereafter mentioned, to make ' good the Guarantee of the Succession of ' the Crown of Great-Britain.'

It appears, in both the above-mentioned Treaties, that the Party requiring is to judge of his own Necessity. In the last mentioned Treaty he is to judge of the Danger of the Barrier, or of the Succession.

The Requisition makes the Succour stipulated to be due, according to the Words of both the Treaties.

Notorious or avowed Preparations, on the Part of a declared Enemy, to attack or invade, necessarily endanger the Object guaranteed, and are a Foundation for the Requisition: Great-Britain therefore is entitled, in such a case, to Succours by both Treaties.

But it is contrary to the Intention of the Contract, that the Party who is to succour, should judge of the Foundation for requiring it.

If it relied upon him, he would have it in his Judgment and Power to succour or not,

not, and the View of the Contract might be frustrated.

If he is * unable, a temporary Inability may be remedied, and it is in his Power.

If a perpetual Inability prevents his giving the Assistance stipulated, the same Inability prevents his receiving any Benefit stipulated.

The Non-performance † of part of an Alliance, is a Dissolution of the Whole, whatever are the Reasons.

The Dutch therefore, as a Republic, having done no one Act towards complying with the several Duties which are placed to their Account by the Spirit and by the Letter of every subsisting Treaty; and their Subjects being guilty of using every Fiction that is contrary to good Faith in their Transactions with the Enemies of Great-Britain, they have forfeited all Title to the express Privileges of any Treaty; much less, under these Circumstances, can they claim a Privilege founded only upon one Treaty (if it is founded at all) by a forced and false Construction.

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* Notwithstanding their own Danger, the Dutch States have neither augmented their Marine nor Army.

† 'Si pars una foedus violaverit, poterit altera à foedere discedere, nam capita foederis singula conditionis vim habent.' Grotius de Jure Belli & Pacis, lib. 2. c. 15. par. 15.

Λύσοτας τὰς Σπονδὰς οὐ μη βοηθεῖτε οὖς ἀν ζυνομόσωσις ὅτι δε αὐτέτων παραβανωσιν ἐκάπεροι καὶ ὅτιδην τότε λελύσθαι τὰς Σπονδὰς. Thucyd. Hist. 1. 1. Belli Peloponnesiaci.

3

To consider the Objections.—

Summary Ex-
position of the
Case of the
Dutch Ships.
Amsterdam.
Page 12.

Objection I. The applying Kingdoms, Countries and Estates, from the 1st Article, to Commodities in the 11d Article of the Treaty of December $\frac{1}{1}$, 1674, is unfaithful, and without Foundation.

Answer. It appears to be otherwise, from the View of the 1st and 11d Articles, as relative to each other.

Exposition,
Page 9.

Objection II. The Proposition of Article 11. *But this Freedom of Commerce shall extend to all Commodities which might be carried in time of Peace,* is to be considered in its Connexion and Totality.

Answer. It has been considered so. Proof
Objection I.

Exposition,
Page 8.

Objection III. *If such Commodities as may not be carried into all Countries in time of Peace, may not be carried in time of War, without Confiscation,* then, Muslin and Printed Calicoes carried into France would be deemed a lawful Prize to an English Captor; by the Consequences of this Proposition, which is maintained, in Justification of the Conduct of Great-Britain.

Answer. If a Proposition is true in relation to one particular Fact, it is not to be argued against from its Consequences, when applied to another particular Fact.

If this Proposition is true, so far as it relates to the Words of the Treaty on which it is founded, and to the Case of the Dutch trading

trading in America to the Colonies of France, it is not less true in that relation, because it may not be true in the Case of a French Smuggler, and in Europe, which may be different.

But it may be true with respect to a French Smuggler. There may be no Absurdity in the Consequence, nor any Injury to the Dutchman.

The Objection itself proves, that the Goods of a Smuggler (*being a Frenchman*), would not be protected by the Ship of a Dutchman, *from the Words of the Treaty*, which is the Consequence we are charged with. The Goods of a Neutral Smuggler are out of the *Question*. The Goods of Enemies are the Object of the Treaty.—We may therefore allow the Consequence, I believe, without overthrowing the Proposition, which is said to be absurd, and therefore not true, upon account of this Consequence.

Objection IV. The Prohibition or Permission of the Commerce in question, is not the Matter of any Engagement between England and Holland, and it never had any Relation to them; but depends solely on his Most Christian Majesty's Will.

Answer. If it is not the Matter of any Engagement between England and Holland, then neither England or Holland are bound by it; the Affirmative of which the Author of

of this extraordinary Assertion intended to prove.

Exposition,
Page 9.

Objection V. The same right and supposed Meaning of the Treaty of 1674, which entitles the English to make Prize of Dutch Ships trading to French Colonies in America, might have entitled the Dutch to have made Prize of the *Afflenta* Ship of the English South-sea Company, when the States continued the War with Spain, after the Peace concluded between England and Spain at Utrecht, July $\frac{2}{3}$, 1713, till about June 26, 1714, when Peace was concluded between Holland and Spain.

Answer. This is arguing from Consequences against a Thing that is true, from a Supposition of a Thing that may not be true, nor similar in all Points, as it was answered to *Objection III.*

It would be sufficient to say, if the Dutch might have taken the *Afflenta* Ship consistently with the Treaty in question, they would have been justified in doing it.

But the Case answers itself. It was the Ship of the South-sea Company, the Goods the Property of the South-sea Company; it was not a Ship licensed by a particular personal Permit, but it sailed under the Sanction of a National Treaty; nor were the Goods on-board the Goods of the Enemies of Holland.

But

But lastly, the Case never existed, to exercise the Indulgence of Dutch Captors.

Therefore no reciprocal Indulgence can be claimed for Dutch Traders in the present Question.

It appears from the Convention of Madrid, May $\frac{15}{26}$, 1716, that the Afflenta Ship Geo. I. 1716. never sailed during the War between Holland and Spain.

The Words are, Paragraph 8.

‘ As to the yearly Ship, and which they have not sent to the Indies in the Years 1714, 1715, 1716, his Catholic Majesty is pleased to make the Company amends.’

That it did not sail in the Year 1713, and the Reason, appear from Paragraph 6.

Objection VI. France does not confiscate Spanish, Swedish, Danish, Hamburgh, or Dutch Ships bringing Merchandises to England.

Answer. They do not carry Merchandises from English Colonies to Europe. But France, with very great Severity, confiscates Dutch Ships for Reasons that English Courts of Admiralty have with Tenderness considered, only as just Causes of detaining *, and of Expences, hitherto; in which Regulations of France, whether justified by the Law of Nations or not, the Dutch Government

* See in the Appendix to this Case, the Marine Ordonnances of France presented to the States of Holland.

ment have acquiesced; and they are *become the Law of Nations* to them by their own Acquiescence, in all Cases where Treaties do not extend, or operate between them and their Ally the other Party at War; who, in such Cases, may, whenever he pleases, in all future Decisions, refer to these Regulations too, *as the Law of Nations*, acquiesced in by the Neutral, and as equally binding in the Favour of the Ally; since he has a Right to be put upon a Level with his Enemy, whether he demands it, or not, of the Neutral.

Exposition,
Page 12.

Objection VII. The English Government have in their Power to put a Stop to such Proceedings against the Dutch Traders, without referring them to the tedious and so very expensive Course of Ordinary Justice.

Answer. In Despotic Governments, as in Turkey, Judicial Proceedings are short and precipitate, because they are arbitrary. English Subjects, committing Acts of Piracy, are apprehended and tried in such Cases, by Law; nor can they otherwise be tried or punished. As to Expences, no Dutch Ship detained, having produced all authentic Proofs of a truly Neutral Property and Conduct, and of the strict Observations of Good Faith in every Act, is, or ever *

was

* I beg leave to observe, that the Concession made inadvertently by the Author of the *Response au Mémoire*, is not grounded

was burthened with Expences of Contesta-
tion ; but, on the other hand, is entitled to
Demurrage ; and the Captor, who has un-
justly, and without *probable Cause*, at his
own Peril, detained the Neutral, is punished
with full Costs, and liable to every other
Punishment that may result from Disobe-
dience to the Instructions of his own Go-
vernment, which he is bound by every kind
of Obligation to obey.

Objection VIII. The Sentences of the ^{Exposition,}
English Courts of Admiralty have been over-^{Page 12.}
hasty, arbitrary and unjust.

Answer. That the Sentences of the Eng-
lish Courts of Admiralty have been over-
hasty, is answered by *Objection VII.*

That they are unjust and arbitrary, is not
true : For they decide by Evidence out of
the Mouth of the Captured Party, and not
of the Captor, whose Evidence, as well as
the Evidence of third Persons, is never ad-
mitted, but where no other Proof can be
had ; as when the Captured abscond, or
have destroyed all the Papers. The Evi-
dence * of the Ship's Crew, and the Ship's
Papers,

grounded upon Fact.— ‘ Je souhaiterois seulement qu' on
peut trouver quelque expedient pour empêcher que les Hol-
landais agissant *de bonne foi*, fussent sujets a payer *des frais*
de procedures dont ils ne sont coupables. C'est un grief
je l'avoue : on pourroit le justifier ; mais il vaudroit mieux
l'ôter.’—P. 8. *Response au Mémoire.*

* See the Royal Instructions, June 4, 1756. Article IV.
And the Act of Parliament for the Condemnation of Prizes,
1756.

Papers, jointly condemn, or acquit: If they contradict one another, farther Proof is indulged to be brought by the Claimant; from the Defect or Neglect of which, if he suffers, it is with Justice—But the English Courts of Admiralty decide not by the Laws of England, with regard to Ships or Cargoes detained as Prize of War, any farther than those Laws co-incide with the Principles of Law acknowledged by *all Nations*; which are the Foundation of their Decrees; they have no Interest between the Parties, but are entirely independent and remote, as are all other English Courts of Justice, from the immediate Direction of the Throne, in particular Cases, unless where there are Instructions previously existing, before such Cases came before them; and which Instructions are in consequence of an Act of Parliament. They are therefore not less the Courts of the Captured, than of the Captor. Nor are any Ships, or Property of Neutrals, detained in the present War, yet, properly speaking, Prize, tho' condemned in one Court of Admiralty; if the Claimants do not forego of themselves their Right of Appeal. There is a Court of Review in the last Resort, consisting of Persons of the highest

See also the Letter of his Grace the Duke of Newcastle; and the Answer to the Memorial of the Prussian Minister, from p. 10. to p. 17. London, 1753.

highest Rank and Understandings, to do complete and ample Justice between all Parties.

Objection IX. In Courts of Appeal in the last War, there were Cases determined favourably with respect to the Dutch trading to the Enemy's Ports.

Answer. In Decisions that were made after the last War was ended, there may perhaps have been Instances of one or two Dutch Ships trading to the Enemy's Colonies, with great Lenity released, under particular Circumstances; adjudged, nevertheless, to pay all Costs to the Captor. But in National Causes *, under different Circumstances and with different Consequences, and de-

* It is by no means the Spirit of the Roman Law, or of the Law of Nations, to rest upon Precedents.

‘ Non Exemplis sed Legibus Jūdicandum est.’ L. 13. Cod. & inter l. omn. Jūdic.

‘ Licet is qui Provinciæ p̄ræst omnium Romæ Magistratuum vice & officio fungi debeat, non tamen spectandum est quid Romæ factum est, quam quid Romæ fieri debeat.’ L. 12. Dig. de Officio Præsidentis.

‘ Senatus non ligatur suis anterioribus Sententiis, quin va-leat postea in contraria jūdicare, Christinæus.’ Vol. I. Decis. Concilii Mechliniæ.

‘ Argumentum à simili est multum fragile & infirmum, nec procedit quando datur dissimilitudo etiam parva.’ Everard. Topic. loc. à simili, § 2.

‘ Res per se valde est perniciosa, exemplis non legibus jūdicare, cum ex levissimâ personarum, vel locorum, vel temporum judicia mutantur.’ Bodinus de Republ. I. 6. c. 6.

‘ Mutatis hominibus quid obstat mutari Sententias?’ Bynkerhoek. Quæst. Juris Publici. L. 1. c. xi. p. 92. Ed. 1752. Leyden.

determined by different Persons, at different Times, there may very justly be different Determinations. For all Decisions in former Cases, are but so many Inferences from Principles ; and therefore cannot have any Authority farther than the Principles themselves shall be found to have Authority, upon a fuller Examination. But in the last War, Holland had entered into the Confederacy ; her Troops had taken the Field with those of Great-Britain, against the common Enemy ; and she had sent the Succours stipulated, immediately, such as they were, upon Requisition made. The contrary is the Case now, in every Particular.

Exposition,
Page 13.

Objection X. No Warning nor Caution was given.

Answer. There was no Ground for Notification. If the French Government had granted to the States of Holland generally, the *perpetual* Privilege of a free Trade to her Colonies in Peace and in War, by solemn Treaty, prior to the present War, and had not granted a *temporary* Privilege, *ex post facto*, to Dutch Subjects particularly, then it might have been expedient for Great-Britain to have opposed her Protestation, and to have notified, that in case of a War breaking out, she would not be bound consequentially, nor prejudiced by that Treaty ; because otherwise she would have

have been esteemed to have acquiesced in it.

But the Case is totally upon a different Footing, as it appears from Facts.

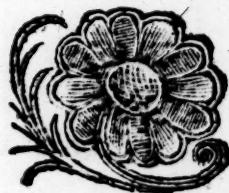
2dly, There was no Ground to notify to the Dutch Government, what was understood to be the Extent of that Privilege of Free Trade, which is granted to them, and which they are still allowed, by the Treaty of December $\frac{1}{1}$, 1674.

There was a *known* Precedent for the Extent of the Free Trade which Holland might, and still may carry on with the Enemy in time of War, by the Example of that which was carried on by the English with France from the Year 1674 to 1678, during the War between Holland and France; therefore there was no need to notify concerning a Trade, a Precedent of which was already notorious; and which was not expected to be carried on in so extensive a Manner, as to render all Lenity and Indulgence impossible, and the *least Delay to impede it*, dangerous and fatal.

Lastly, There are Times, Dispositions, and Circumstances, when such Notices might be construed as amounting to a Declaration of War; and of those Times, Dispositions, and Circumstances, the Governing Powers are the sole and proper Judges, as they are
of

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of the Inconveniences and Dangers which may result under such Views to the State, and to their own Country ; by the Exigencies of which they will most certainly be guided, as they will most certainly be justified.



AP-

APPENDIX.

THE States of the United Provinces, in their Wars with other Countries, have, at different Times, interdicted all other Neutral States any Communication with the Enemy, whatever, under Pain of Confiscation of both Ships and Cargoes.

In Proof of which are the Placarts, published July 27, 1584, April 4, 1586, August 4, 1586, June 26, 1630, and December 5, 1652.

In the Placart of June 26, 1630 *, are the following Words :

Article I. ‘ Dat Schip en goed van Neu- Article I.
 ‘ tralen, in of uyt vyandelike havenen in
 ‘ Vlaanderen komende, of zoo na dezelve
 ‘ zynde,

* ‘ Satis defendi potest rigor ejus Decreti,’ 26 June, 1630. Bynkershoek. Quæst. Juris Publ. Ed. 1752. Printed at Leyden, 1. 1. c. xi. p. 91.

‘ zynde, dat ongetwyfelt is, dat zy daar in
 ‘ willen loopen, geconfisqueert zullen wer-
 ‘ den, om dat haar Hoog Mogende de
 ‘ voorschr, havenen met Oorlog schepen
 ‘ continuelyk *beset* houden, om de com-
 ‘ mercie met dan Vyand aldaar te beletten,
 ‘ ‘t welk van ouds in gebruyk is geweest,
 ‘ op’t exempel van alle Princen, die ook
 ‘ gelyk regt in zodanige gevallen ge-
 ‘ bruyken.’

Article I.

‘ Art. I. ‘ *Neutral Ships and Goods* passing
 ‘ in or out of the Ports of the Enemy in
 ‘ Flanders; or *being so near them*, that there
 ‘ can be no Doubt but they will go into them,
 ‘ *shall be confiscated*: Because their High
 ‘ Mightinesses continually *beset* those Ports
 ‘ with Ships of War, in order to hinder any
 ‘ *Commerce* with the Enemy. Which has
 ‘ been an ancient Custom, warranted by the
 ‘ Example of all Princes.’

Article II.

‘ Art. II. ‘ Indien uyt de vracht brieven,
 ‘ of andere bescheiden bleek, dat de sche-
 ‘ pen na ne zelve Vlaamsche havenen ge-
 ‘ destineert waren, niet tegenstaande zy nog
 ‘ verre daar van daan zynde wierden agter-
 ‘ haalt, ten ware zy proprio motu, eer zy
 ‘ in’t gesight of gevolg van’s Land’s schepen
 ‘ raakten, *re adhuc integrâ paeniterende*, ve-
 ‘ randerden, ‘t geen, *pro re nata, ex con-*
 ‘ *jecturis*

‘ *jeeturis & circumstantiis*, zoude geoordeelt
‘ worden.’

And also Ships and Cargoes are to be condemned.

Art. II. ‘ If from the Bills of Lading or from other Documents it appears that the Ships were bound to the said Flemish Ports, notwithstanding they were overtaken, being yet at a great Distance from thence, or unless they had of their own motion changed their Course, before they came in Sight of, or were chaced by the Man of War, before any thing had happened and afresh, which from Conjectures and Circumstances upon a View of the Case should be determined

Art. III. ‘ Welke uyt de voorschr. ha-
‘ venen komen (sonder nood daar in ge-
‘ raakt zynde) al wierden de zelve verre daar
‘ van daan genomen, zoo lang zy van die
‘ reyse in geen vrye havenen van haar of een
‘ neutraal geweest zyn, maar geweest zynde,
‘ niet, ten ware zy in’t uytkommen der
‘ voorschr havenen van’s Land’s schepen ge-
‘ volgt, en in een andere haven, als haar
‘ eigen, of daar de reyse gedeftineert was,
‘ gejaagt, en wederom uytkomende op zee
‘ verovert wierden.’

Art. III. ' Or which Ships come from
 ' the said Ports, having been in there with-
 ' out necessity, altho' they were taken at a
 ' great Distance from thence, so long as they
 ' have not on that Voyage been in any free
 ' Port of their own, or any neutral Port,
 ' but having been in any such, then not;
 ' unless on their coming out of the said Ports
 ' they are followed by the Men of War and
 ' are chased into another Port which is not
 ' their own, or to which they were bound,
 ' and on their coming out again are taken at
 ' Sea.'

The Ships and Cargoes are in this case
 to be confiscated.

The Placart of July 27, 1584, considers
 the Blocking up of the Enemy in a most
 extensive Manner, so as to comprehend the
 Enemy's Coast; which is grounded upon
 this Principle, as it is to be imagined, that
 a Fleet lying in the Entrance of a Harbour
 is not necessary to make the Meaning of the
 Word Blocked up, which may certainly be
 taken, as it is by the Dutch ~~States in~~ this
 Placart, in a wider Sense; and that every
 Harbour is Blocked up, *quoad hunc*, to every
 Ship destined for that Harbour that is taken;
 altho' many Ships may escape: It is blocked
 up to all Intents and Purposes as to that
 particular Ship; and, for this Reason (to
 use

use the Words of a Dutch modern * Writer of great Authority) because the Captured are gone so far as not to have it in their Power to return. And it may be observed, that it is indifferent, certainly upon the above-mentioned Principle, whether the Ships are taken by single Cruizers, or by a Squadron.

*The Words of the Placart, July. 27. 1584
confiscating both Ships and Cargoes, are:*

‘ Die binnen de banken van Vlaanderen
‘ of op de kusten van eenige verbodene
‘ havenen gevonden worden, zullen geoor-
‘ deelt worden tegen dese Ordonnantie ge-
‘ daan te hebben, ten ware zulks gebeurde
‘ door treffelyke en wel bekende nood.’

‘ Ships, that are found within the Banks
‘ of Flanders, or on the Coasts of any prohi-
‘ bited Ports, shall be adjudged to have ac-
‘ ted against this Ordonnance, unless it hap-
‘ pened by urgent and evident Necessity.

Ships and Goods taken *near* the Enemy, are presumed to be going to the Enemy, and confiscable. Vide Placarts published by the States-General, 1665, 1672.

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* ‘ Quum eo jam sunt progressi unde locus redeundi non
‘ est.’ Bynkershoek. Quæst. Juris Pub. L. 1. c. xi. p. 89.
speaking of this very Placart, and the very Words cited as
above.

The Ordinance of the States-General, prohibiting all Commerce with England, December, 5, 1652, is as follows:*

| | |
|---|--|
| <p><i>C'est pourquoy etant obligés a raison de ces hostilitiés de reparer & faire reparer les dits dommages avec l'affi- stance de Dieu d'en prevenir d'autres al' a- venir, & d'empêcher autant qu'en nous est a ceux dudit Gouver- nement les commoditez, & les choses nécessaires par lesquelles ils pour- roient continuer d'a- porter du dommage a l'Etat de ces Pais, & aux bons habitans d'i- ceux ; Nous avons trou- vè bon & jugé néces- saire d'ordonner a tous ceux qui sont sous notre Domination & de leur deffendre bien expres- sément</i></p> | <p>' Soo ist, dat Wy door de voorsz vy- antliche aggressien genootdruckt zijn- de, omme de voorsz, schaden, door God's hulpe, te repareren, doen repareren, ende alle vordere in toe- commende, voor te comen, oock daar benefens de ruine van de Commercie ende Navigatie de ser Landen, soo veel doenlijck, te belet- ten, ende tot dien eynde die vande voorsz. Regeringe, soo veel in Ons is, te benemen, ende te verhinderen de com- moditeyten ende be- ' hoeften,</p> |
|---|--|

* This Ordinance is published in Low-Dutch and French, in the *Corps Diplomatique*, Tom. VI. Part 3. Printed at the Hague, 1728.

*lement, comme aussi d'aver-
tir toutes autres
Nations qui sont en Al-
liance, Amitié & Neu-
tralité avec cet Etat ;
comme nous Ordonnons,
&c.*

‘ hoeften, daer mede
‘ de Selve den staet
‘ deser Landen, ende
‘ de goede Ingesetenen
‘ van dien, verder af-
‘ breuck souden hon-
‘ nen doen, derhalven
‘ goet gevonden ende
‘ noodich geachtheb-
‘ ben, allen dan ge-
‘ enen die onder on-
‘ se gehoor saemheyt
‘ zijn staende, te or-
‘ donneren, ende wel
‘ Scherpelick te ver-
‘ bieden oock in ‘t
‘ vruntlijck te adver-
‘ teren en te waersch-
‘ ouwen alle andere
‘ Natien met desen
‘ staet in Verbondt
‘ Vruntschap, of te
‘ Neutraliteyt staen-
‘ de,’ &c.

Being obliged, therefore, by reason of these Hostilities, with God's Help, to repair, and cause the said Damages to be repaired, to prevent others for the future, and as far as possible to hinder the Ruin of the Commerce and Navigation of this Country;

try; and for this end to deprive those of the said Government, as far as it is in our Power, of the *Conveniences* and *Necessaries*, by which they might continue to *damage* the State of this Country, and the good Inhabitants thereof; we have thought it fit and necessary to order all those who are under our Obedience, and most expressly forbid them, as also to give *Notice to all other Nations* which are in Alliance, Amity, and Neutrality with this State; as we do, &c.

| | |
|-----------------------------------|--------------------------|
| <i>Que d'icy en avant</i> | ‘ Art. I. ‘ Eerstelijck, |
| <i>personne des Habitans</i> | ‘ dat van nu voortoen |
| <i>de ces Pais n'ait à</i> | ‘ niemand van d'Inge- |
| <i>s'ingerer de mener ou</i> | ‘ setenen deser Lan- |
| <i>transporter hors de ces</i> | ‘ den, hem sal heb- |
| <i>Pais, ou hors d'autres</i> | ‘ bente bevorderen uyt |
| <i>Pais, Royaumes, Pla-</i> | ‘ dese Landen, ofte |
| <i>ces ou Villes directement</i> | ‘ oock uyt eenige an- |
| <i>ou indireettement, au-</i> | ‘ dere Landen, Ko- |
| <i>cune Merchandise ou</i> | ‘ ninckrijcken, Plaet- |
| <i>Denrée de quelque sorte,</i> | ‘ sen, ofte Steden, te |
| <i>qualité, ou nature qui</i> | ‘ vervoeren ofte trans- |
| <i>ce puisse être, nulle ex-</i> | ‘ porteren, directeli- |
| <i>ceptées, dans quelques</i> | ‘ jck, ofte indireeté- |
| <i>Ports, Iles, Villes, &</i> | ‘ lijck, naar eenige |
| <i>Places d'Angleterre,</i> | ‘ Havenen, Eylanden, |
| <i>Ecosse, ou Irlande, ou</i> | ‘ Steden, ofte Plaet- |
| <i>autres de la Domina-</i> | ‘ sen van Engelant, |
| <i>tion</i> | ‘ Schot- |

tion du present Gouvernement d'Angle-terre, ni d'avoir aucune Correspondence avec les Habitans des dits Royaumes, ou Dependances, par Lettres ou autrement, tendantes au desavantage de cet Etat.

Q'aussi Personne du Monde, qui qu' Etranger, & non habitant de ces Pais, n'ait à entreprendre de faire rien de ce qui est dit ci-dessus, sur peine d'etre punis sans aucune connivence, comme Ennemis de cet Etat, & en outre sur peine de confiscation des Vaissaux & Merchandises qui se trouveront avoir eu dessein d'aller en Angleterre, ou autres Places comme dessus, ou la valeur d'iceux & à icelles, au cas qu'ils soient déjà retirés & qu'on ne les ait pu saisir.

' Schotlandt, ofte Yer-
 ' landt, ofte anderen
 ' onder de gehoor-
 ' faemheyt vande je-
 ' genwoordige Regi-
 ' eringe van Enge-
 ' landt staende, eenige
 ' waren, Gooderen of-
 ' te Coopmanschap-
 ' pen, van vat soorte,
 ' qualiteyt, ofte na-
 ' ture de Selve oock
 ' souden mogen we-
 ' sen, geen uytgeson-
 ' dert, ofte oock eeni-
 ' ge correspondentie
 ' ende gemeenschap-
 ' met d'Indwoonde-
 ' ren van Engelandt
 ' voornoemt, ofte ha-
 ' ere onnderhoorigen,
 ' door Brieven ofte
 ' andersints, strick-
 ' ende tot naedeel van
 ' desen Staeten, te
 ' houden, in eeniger
 ' manieren, dat oock
 ' niemandt ter We-
 ' relt, al-hoe-wel en
 ' Vreemdelingh, ende
 ' geen Ingestenender
 ' Landen zijnde, hem't
 ' geen

' geen voorsz. Is uyt ' pooght worden naer
 ' dese Landen sal heb- ' Engelandt voorno-
 ' ben t'onderwinden, ' emt, ofte andere
 ' op pene van daer ' Plaetsen als vooren,
 ' over, als Vyanden ' veroert te worden,
 ' vanden Staet, sonder ' ofte de waerde van
 ' eenige conniventie, ' dien, by soo verre
 ' gestraft te worden, ' de selve albereyts
 ' ende voorts op ver- ' uytgevoert, ofte an-
 ' beurte van alle de ' derlints niet te be-
 ' Schepen ende Good- ' komen sullen wer-
 ' eren die men be- ' den.
 ' vinden sal, dat ge-

Article I. ' That from henceforward
 ' none of the Inhabitants of these Coun-
 ' tries offer to carry, or transport out of
 ' these Countries, or *out of any other Coun-*
 ' *tries, Kingdoms, Places, or Towns, di-*
 ' rectly, or indirectly, any Merchandise, or
 ' Commodity of *any Sort, Quality, or Na-*
 ' *ture soever, (none excepted) into any*
 ' Harbours, Islands, Towns, and Places of
 ' England, Scotland, or Ireland, or others
 ' in the Dominion of the present Govern-
 ' ment of England, nor to have *any Corre-*
 ' *spondence with the Inhabitants of the said*
 ' *Kingdoms, or Dependencies, by Letters,*
 ' *or otherwise, tending to the Disadvantage*
 ' *of this State. Neither shall any Person*
 ' *whatever, though a Foreigner, and not an*

‘ *Inhabitant of these Countries, undertake
 ‘ to do any thing of what is said as above,
 ‘ on pain † of being punished, without any
 ‘ Connivance, as Enemies of this State.

‘ And moreover, on pain of forfeiting
 ‘ such Ships and Merchandise, as shall
 ‘ appear to have been destined for England,
 ‘ or other Places as above, or the Value
 ‘ thereof, in case that they are already
 ‘ withdrawn, and cannot be laid hold of.’

The Contents of other Articles are as follows :

Article IV. ‘ All Neutral-ships are to
 ‘ keep the high Seas, and not to be found
 ‘ upon the Coasts, and particularly in the
 ‘ Bays and Creeks of the Enemy.’

Article V. ‘ To be visited, and their Do-
 ‘ cuments searched, that the Dutch Com-
 ‘ manders may be assured that they are not
 ‘ going to England; if it appears from the
 ‘ Documents, or from other Circumstances,
 ‘ that they are destined thither; then they

H ‘ may

* Bynkershoek. Quæst. Juris Pub. L. 1. c. x. p. 33. says as follows.

† ‘ Negant Foederati et socii nostri subditum ad communem
 ‘ hostem commeantem a nobis puniri, vel res ejus publicari
 ‘ posse, quemque enim principem sua ipsius edicta exequi,
 ‘ adeoque nullas hic esse Foederatorum partes. Sed ratio,
 ‘ usus atque ipsa Utilitas eam sententiam evertunt. Excute quæ
 ‘ de ea re, habet Aitzema. Hist. Belg. L. 46. p. 629, 630.

‘ may *safely* be brought in for Adjudication.’

Memoire Instructif, or the Ordonnance and Regulations delivered by the Court of France to the States-General of the United-Provinces, published by Authority in the Utrecht Gazette, July 8, 1756.

PREAMBLE,

‘ Every Power at War is naturally attentive to prevent its Enemies from carrying on a free Trade, under the Protection of Neutral Colours. It may happen, for example, that notwithstanding a Ship carries Neutral Colours, that the Ship itself, and the Goods on-board her, may really and truly be the Property of the Enemy, which is, what is termed, a *Navire Masqué* (or a Ship disguised). In such a case, if the Enemy’s Property is discovered, the Ship would be deemed a good Prize.

‘ As during a War every Power is *justified* in suspecting that Disguise and Artifices will be made use of, the Privateers are diligent in stopping Neutral-ships, to examine by the Papers and Documents, which they are obliged to have on-board, if

‘ if they are really Neutrals, or if the Ships
‘ or Cargoes belong to the Enemy.’

The Ordonnance of the Marine and Regulations of France have exacted certain Conditions and certain Forms, which, when observed * by a *Neutral-ship*, that Ship is considered as truly neutral; but if, on the contrary, it is found that there is a Failure in any of those Forms and Conditions, the Ships are to be presumed to be disguised, that is, to belong to the Enemy, and are to be deemed lawful Prizes.

It must also be here observed, that the Regulations established by France during the War, are not particular to her only, but that other Nations have established nearly the same.

As the Hollanders are neutral in the present War, it is their *Interest* to conform to the Regulations of France, to prevent their Ships being declared good Prizes.

1. Among the Number and Quality of the Papers which they are to have on-board their Ships, must be the Charter-party, Bills of Loading and Invoices: where these

* It appears by this, that the French Admiralty condemns or acquires all other Neutral ships upon these Principles, as well as Dutch Ships, and that it considers these Principles as the Law of Nations.

Documents are not found, the Ships will be deemed good Prizes.

2. It will not be sufficient that the Ships have the Bills of Loading on-board, but they must also be found signed by the Captain; if they are not so signed, they will be considered as null, and the Ships and Merchandizes will be adjudged as good Prizes; because from such Defect they will be presumed to belong to the Enemy.

N. B. It was always customary to make double and triplicate Bills of Loading, and till now they thought that in Holland it was not necessary, that those which the Captain carries should be signed by him, and that he had them to serve only as Memorandums, to ascertain the Merchants to whom he was to deliver the Goods, and to enable him to demand his Freight; nor in the last War were such Things commonly practised; which however has been the Occasion of the Confiscation of many Ships.

3. If a Dutch Ship shall be met with by a French Privateer, the Captain is to take care not to throw, nor cause to be thrown, *any of his Papers* into the Sea; if it should be proved that *any kind* of Papers were thrown overboard, the Ship and Cargo shall be declared a good Prize.

4. The Dutch are further to observe, that the Super-cargo, Clerk, or Marine-officer, is not to be a Native of any Country at Enmity with France; and that not more than a Third of the Ship's Crew be the Subjects of the Enemy. If these Particulars should not be observed, the Ship shall be declared a good Prize, and presumed to belong to the Enemy.

5. Among the Papers on-board Dutch Ships, must be the Equipage or Muster-roll, authenticated by the public Officers of the Place from whence they came: when this Authenticity is wanting, the Ships will be declared good Prizes.

6. The Dutch Merchants are likewise to observe, not to export by their Ships, any Contraband-goods, such as Fire-arms, Swords, Cutlasses, and other Things useful and necessary for the Purpose of War, under pain of Confiscation.

7. If the Dutch Ships carry any Goods or Merchandise of the Growth or Manufacture of the Enemies of France, they shall be esteemed good Prizes; but the Ships shall be discharged.

N. B. The Regulation made in the last War, permitted the Dutch to trade with the

the Enemy, in conformity to the Treaty of Commerce made with the States in 1739. But as the King revoked that Treaty at the Conclusion of the War, the Goods of the Growth or Manufacture of England, or belonging to the English, which shall hereafter be found on-board a Dutch Ship, shall be declared good Prize, unless the 14th Article of that Treaty should hereafter be renewed.

8. The Licence or Passport, which may be granted in Holland to a Dutch Ship, shall be of use only for that Voyage for which it was given ; that is, to go from the Place of its Loading, to that of its Destination, and from thence to return to Holland. If it should make any other *intermediate* Voyages with that Passport, it shall be declared a good Prize.

9. When the Licence or Passport shall be given in Holland to a Dutch Ship, it must be declared in that or some other Paper on-board, that the Ship was, at the time of granting it, in one of the Ports of Holland : in failure of which she shall be deemed a good Prize.

10. If the States of Holland should grant Passports or Licences to the Owners or Masters of Ships, Subjects of an Enemy of

of France (unless such Owners or Masters shall have resided, and been *naturalized* in Holland, * *before* the Declaration of the present War) the Ships and Merchandise shall be confiscated, as reputed to have belonged to the Enemy, even though the Ship should have been built in Holland.

11. If a Ship is English-built, or formerly belonged to the Enemy, the Dutch Captain must have on-board authentic Papers, and a Bill of Sale certified by the public Officers in Holland, to prove that such Ship is Dutch Property, and was such † *before* the Declaration of the present War.

N. B. It is further required, that it be proved by the Papers on-board, that the Deed of Transfer of the Property of the Ship has been registered by the principal Officer of the Port in Holland, from which the Ship has departed; and without these *two* Proofs, the Ship may be declared a good Prize; of which there were several Instances in the last War.

12. If during the present War, any Privateer, or Ship of War, should take any

I Ships

* This shows how much the French were aware of the Readiness of the Dutch to grant Burghers Briefs to any that apply for them.

† From this Article it seems, that the French do not allow the Dutch to purchase, in time of War, any Ships of the Enemy.

Ships English-built, and that those Ships should afterwards be sold to the Dutch, or other neutral Subjects, there must always be found on-board of them Documents to prove the *Captures* as well as the Sale; without which, such Ships will be liable to Condemnation.

This Account contains therefore the principal Rules that Dutch Ships are to observe (not but that other neutral Powers are under the same Restrictions regarding their Ships) and the principal Precautions which they are to avoid, being declared good Prizes in case they should be taken during the Course of the present War, by the French Men of War or Privateers.

A Licence from the Dutch West-India Company.

The Directors committed by the respective Chambers of the General Chartered West-India Company of the United Netherlands, at the Meeting of Ten, To all who shall see or hear these Presents read, Greeting, Make known that we, according to, and in Conformity to the Resolution taken on the 4th of January, 1757, at the Meeting of Ten, concerning the same, have permitted and consented, as we do permit and consent by these Presents, to Johannes Son, Captain, or Master of the Ship called De Resolutie, at present lying in the

the Texel, that he may depart with his Ship for Curacao, drive Trade, and further to lade his Ship there with all such Wares as *within the said District are produced*,* and as he shall think proper, provided that the said Ship, having accomplished his Voyage, shall not be *permitted to go to any other* but to these Countries, *much less there to break Bulk*, on the Penalty that then the Rights of the Company shall be due, and be obliged to be paid; and that, besides the said Captain, with his aforesaid Ship, shall not be permitted to come on the Coasts and Countries of Africa, to be reckoned from the Tropico Cancri to the Latitude of Thirty Degrees by South the Equinoctial Line, with all the Islands in that District, lying on the aforesaid Coasts, and 'specially not at the Islands of St. Thomé, Amnebor, Isle del Principe, and Fernando Polo, nor at those Places in America where the said Company is driving some private Trade, much less to trade there, on Penalty of the said Ship and the Cargo laden in the same; desiring therefore our General and Governor, commanding all Directors, Chiefs, Commanders, Captains, Ship-masters, and all others being in the Service of the said Company, freely to permit the said Captain to perform this his ensuing Voyage, and to suffer him, at the Exhibition of these Presents,

I 2 to

* See the Authorities for the Meaning of the Word Val-lende, at the End of this Book.

to lade his Ship with such Merchandizes and Goods as he shall think proper, and by no means to hinder him ; but, to the contrary, to aid and grant him all the Assistance to further him ; that is to say, provided that the said Captain or Master, and every one of his Crew, shall regulate themselves in all Points and Parts precisely, and behave according to the Contents of the Charter granted to the aforementioned Company, and the Permission ; on Penalty of coming under the Forfeiture of both expressed, and to be immediately deprived of the said Liberty, as if the same never hath been granted him. Done at the Meeting of the Ten, as above, and granted by the Chamber of Amsterdam, on the 18th of November, 1757.

Is signed,

W. BACKER.

As Directors of the Chartered West-India Company, at the Chamber aforesaid,

B. DE WILHELM, 1757.
P. V. LOON.

By Order of the same,

RICHARD KASSEBOOM.

The French common Pass.

Louis Jean Marie de Bourbon, Duke of Penthièvre, Chateau Vilain, and of Rambouillet,

bouillet, Admiral of France, Governor and Lieutenant-general for the King in his Province of Britany, to all those who shall see these present Letters, Greeting. We make known that we have permitted Ryndert Evertsz Johanneszon, Master of the Ship called De Resolutie, of Amsterdam, of the Burthen of Three Hundred and Sixty Tons, or thereabouts, to depart out the Port and Harbour of Bourdeaux, where he now lies, to go to Curacao, laden with Wine, and other Merchandizes, after this present Permission shall have been registered in the Registry of the Admiralty, and his Ship searched, as is customary. In Witness whereof we have signed these Presents, and caused hereunto to be affixed the Seal of our Arms, and to be counter-signed by the Secretary-General of the Marine.

Delivered at Bourdeaux,
the 15th of March, 1758.

L. J. M. DE BOURBON.

By Command of his Serene Highness.

ROMIEU.

Being registered this same Day in the Registry of the Admiralty.

*The French King's Special Licence.**By the King.*

To our dear and well-beloved Cousin Louis Jean Marie, of Bourbon, Duke of Penthièvre, Admiral of France, To the Vice-Admirals, Lieutenants-general of our Naval-Forces, Commodores, Captains, Commanders of our Ships, and those of our Subjects, Captains of our Coasts, Governors of Maritime Towns and Places, Mayors, Consuls, and Eschevins of the same, Governors and Intendants of our Colonies, Lieutenants of the Admiralty, and to all others our Officers and Subjects whom it may concern, Greeting. Having permitted Captain Ryndert Evertsz Johannes, Master of the Ship the Resolution, of Amsterdam, manned with Thirty Men, of the Burthen of Three Hundred and Forty Tons, or thereabout, to go from the Port of Amsterdam to Bourdeaux, *within the Space of Twelve Months*, to be accounted from the Day of the Date hereof, and from thence to the Ports of St. Mark, Port au Prince, and Leogane, in our Island of St. Domingo, with a Cargo of Provisions and Eatables, consisting of Wines, Beer, Flour, Butter, and also of Soap, Oil, Candles, Wax-tapers, Nails, Coppers, Hoes, Bills,

Bills, Cordage, Linnens, and other Merchandizes, proper for the Use of the Inhabitants, and to return to Amsterdam aforesaid.

We will and command you to permit the said Ship to pass securely and freely in going from the said Port of Bourdeaux to the said Colony, as also in returning back to Amsterdam, *provided* it be within the said Term of Twelve Months, with his Cargo of Merchandizes, which he shall take in return *for the* Produce of the Sale*, which he shall have free Liberty to make there of his first Cargo, *upon Condition* that he shall *pay in France the Duties due to our Western Domaine* for the said Merchandizes, upon the Footing of the Receipt which shall be delivered to him for the *Duties outwards*, which he shall be obliged to pay at the said Colony, as well as the *Duties inwards* upon his first Cargo; and also *upon Condition* that the said Ship shall carry no other Merchandizes than those here above specified, nor carry any other Persons but the Crew thereof, except Passengers, *to whom we shall have granted particular Leave*; the whole *upon Penalty of Confiscation of the Ship and her Cargo*; and further, *upon Condition* of his giving, at the Time this present Passport shall be delivered to him, *good and sufficient*

* It does not appear by Virtue of this Licence, that the Dutch Skippers can *lawfully* invest their outward and homeward bound Freight in French Product, but the contrary; and these Terms would work a Presumption against such Property being admitted to Proof.

sufficient Bail, in our City of Paris, in the Sum of Fifteen Thousand Livres, as well for Security of the Payment of the Duties here above-mentioned, as for the Performance of the other Conditions of the said Passport, which shall serve but one Voyage only ; for which Purpose the said Captain shall be obliged to cause the same to be registered in the Registry of the Admiralty of the said Colony, and the said Registering to be certified upon this present Permission, for such is our Will and Pleasure. Given at Versailles, the Twenty-fifth Day of the Month of October, One Thousand Seven Hundred and Fifty Seven.

* LOUIS.

By the King.

Peirene Demoras.

The Duke de Penthièvre, Admiral of France, having seen the King's Passport hereabove, and on the other Side written directed to us : We do command all those over whom our Power extends, to execute the same according to the Form and Tenor thereof : And we order all the Officers of the Admiralty to cause the same to be registered in the

* The Conditions of this Licence are so extraordinary, that no Prince can subject Persons or Things to himself in a more absolute manner.

[65]

their Office. Done in Paris the Twenty-sixth Day of the Month of October, One Thousand Seven Hundred and Fifty-seven.

L. J. M. DE BOURBON.

By his Serene Highness's Command,

DE GRANDBOURG.

This Passport of the King, and Letters of his Serene Highness, here-above, and on the other Side written, hath been registered at the Request of Mr. Harmensen fils, upon his Petition of this Day, to have recourse thereto in case of Need at Bourdeaux, the Fifteenth of March, One Thousand Seven Hundred and Fifty-eight. Signed NAVARRE, LASCOMBES, HARMENSEN, & fils, and the under-written

GRIFFIER.
GRECA.

A French Commission of War.

Louis Jean Marie de Bourbon, Duke of Penthièvre, Governor and Lieutenant-General for the King, in his Province of Britany, Admiral of France, to all to whom these Presents shall come, Greeting. We make known that we have given leave to Mr. François Mitteau, Master and Captain of the Ship named Le Grand Gideon, of Rochelle, of

K the

the Burthen of about Three Hundred Tons, mounting Fourteen Guns and Swivels, being now at the Harbour of Rochelle, to cause the said Ship to be fitted out for War and Trade, to arm and provide her with all Things necessary, and load her with such Goods as he shall think proper, provided they are not prohibited or forbidden, to go and trade to Quebec, and in so doing to make War upon all Pirates, Robbers, lawless People, and others, who would hinder the Liberty of the Commerce of the King's Subjects; also on the Enemies of the State, if, during the Course of the Voyage, War shall happen to be declared between his Majesty and some other Power; he may also cruize on the Ships, Barks, and other Vessels, as well *French* as *foreign*, *carrying on a foreign and prohibited Trade* to the French Islands of America, to subdue them by Force of Arms, to take and carry them to the Island nearest to the Place where the Prize shall have been made, having always first given the same Bond as if fitted out for War, without which this Commission may not be delivered to him, with a Charge to the said Mr. Mitteau, to keep, and cause to be kept by his Crew, the Ordinances of the Marine, to carry, and cause to be carried, during his Voyage, the Flag of the King's Arms, and of our's; to cause these Presents to be registered in the Registry of the Admiralty, the nearest to the Place where he

he shall fit out, there to lodge a Roll, signed and certified by him, containing the Names and Surnames, the Places of Birth and Abode of the Men of his Crew, to return to the said Place, or other Ports of the Isles of America, or of France, there to make his Report before the Officers of the Admiralty, and none others, of what shall have happened to him during his Voyage, to give us Advice thereof, the whole conformable to the Regulation made by his Majesty the Twenty-third Day of July 1720. We pray and request all Kings, Princes, Potentates, States, Republicks, Friends, Allies, and Confederates of this Crown, their Admirals, Governors of their Provinces, Towns, Ports, Harbours, and Passages, Captains, Chiefs, and Leaders of their Ships and Crews, and other their Officers and Subjects, whom it shall concern, to give the said Mr. Mitteau all Assistance, Passage, and Retreat in their Harbours, with his said Ship, and what he may have taken, offering to do the like when we shall be by them requested : We order and command the Vice-admirals, Lieutenant-generals of Sea Forces, Chefs d'Escadres, Captains of Ships, and all other Officers of the Marine, whom it shall concern, to let the said Mr. Mitteau safely and freely pass with his said Ship and Crew, and all he may have taken during his Voyage, by Virtue of these Presents, without giving him, or suffering to be done

or given to him, any Trouble or Impediment, but, on the contrary, all the Succour, Aid, Favour, and Assistance, he shall have need of; and these Presents shall serve but for one Voyage only. In Witness whereof we have signed these Presents, and caused them to be sealed with the Seal of our Arms, and to be counter-signed by the Secretary-General of the Marine, at Paris, the 12th Day of April 1758.

L. J. M. BOURBON.

By his most Serene Highness,
ROMIEU.

Delivered at Rochelle, the 22d of April, 1758, by Virtue of the Certificate of Mr. the Lieutenant of the Admiralty. Received Sixty Livres.

Seal.

RIGOLLEAU.

Registered in the Registry of the Court of Admiralty, of the City of Rochelle, the Twenty-second of April 1758, at the Request of Mr. Mitteau, who has made the requisite Submissions, and given Bond according to the Ordinance, whereof an Act is made.

BOUTET,

Received Seven Livres, Ten Sols, for the Submission, and Bond Twenty Sols.

Particular

Particular Instructions and Orders,

According to which Captain Ryndert Evertz Johanesz, commanding the Fly-Boat Ship, called De Resolutie, bound from hence to Bourdeaux, and from thence to St. Marc, Port au Prince, and Leogane, at the Island of St. Domingo, and from thence again hither.

ARTICLE I.

Captain Ryndert Evertsz Johanes, shall, by the first convenient Opportunity of Wind and Weather, go under Sail with the Ship the Resolutie, out of the Texel, as soon as the Ship shall be in a Condition to go to Sea, and sail directly to Bourdeaux, without touching at any Port but by absolute very urgent Necessity, and specially not in any English; to avoid all Loss of Time, and Hindrance in his Voyage, as much as possible.

II.

Being arrived at Bourdeaux, the Captain must immediately apply himself there to Meffrs. J. C. Hermensen and Son, and deliver to them the Letter of Recommendation of Meffrs. Edward Bouwer, Father and Son, of this Place, by Virtue of which Meffrs. Harmensen shall assist the said Captain, and the Ship, in every thing where it shall be necessary; and in case the Ship being arrived in the River of Bourdeaux, could not sail up directly

directly to the City of Bourdeaux, the Captain must (in case of an Opportunity then be) with a Letter make known to Messrs. Harmensen, immediately his Arrival in the River.

III.

According to the Charter-party made here between us and Messrs. Bouwer, Father and Son, and whereof we give the Copy along with the Captain, are Twenty-one successive Days, limited for the lading the said Ship at Bourdeaux, to reckon from the Day that the Captain shall be there ready to receive his Lading on board of the said Ship, and that he shall have acquainted the same to the Gentlemen Harmensen, who must lade the Ship; and in case it should happen that the Ship did not receive its Lading there within the mentioned Space of Twenty-one Days, so many more shall be allowed to Messrs. Harmensen, as they shall stand in need of, provided that all the lying Days at Bourdeaux shall be deducted from the One Hundred and Forty-One successive Days, which, according to the Charty-party at Bourdeaux, and at the Island of St. Domingo, are agreed upon for lading and unlading, and relading; and that the Captain takes at Bourdeaux a proper Proof of the Number of lying Days employed there, to shew at St. Domingo, how many there be yet due there: In case Messrs. J. C. Harmensen and Son, at Bourdeaux, should think proper to cause One or Two Passengers to go

go to St. Domingo, the Captain must lodge them in the Cabbin, and provide them with Ships-Vi^tuals and Drⁱnk, without being paid for any Pa^{ss}age ; but, in case they should de^sire something extraordinary, that shall be for their Account ; besides these Pa^{ss}engers the Captain shall not take any others on board, neither here nor elsewhere ; and likewise no Merchandizes but those mentioned in the Pa^{ss}port of the King of France, that being prohibited, on Penalty of Confiscation of Ship and Lading.

IV.

The Ship being laden at Bourdeaux, and ready of every thing, the Captain shall mind the Wind, for, in case the same be open to Hyzant, he shall set his Course thither, and being approached to near that Height, he shall turn the Ship's Head to take his Course directly to St. Marc, at the Island of St. Domingo, as it is not adviseable with such a Wind to keep the Course from Bourdeaux, Southward : If the Captain should meet with English, it would make him immediately suspected with an open Wind to the Chan^{nel}, and give an Opportunity to bring the Ship up, for, from Bourdeaux intending to Amsterdam, as the Captain meeting with English in the Bay of France, must declare (wherefore he also must receive Bills of Lading of the Cargo at Bourdeaux, *pro forma* for Amsterdam) he cannot with a favourable Wind

Wind to the Channel, keep his Course from Bourdeaux, South-westward, without giving Suspicion to the English, meeting with them in the Bay of France ; but in case the Wind to the Channel, at the Departure of the Ship from Bourdeaux, be not favourable, the Captain must chuse the nearest Way to get out of the Bay of France, and thus prosecute his Voyage to the Island of St. Domingo, notwithstanding to keep the Bills of Lading for Amsterdam, 'till he is out of the Bay, when, and not sooner, he must tear those Bills of Lading, or throw them overboard, not to keep any superfluous or unnecessary with him : The Captain must also sign Bills of Lading at Bourdeaux, *pro forma* to Curacao, and take one along with him thereof.

V.

The Captain must take care, at his Arrival at Bourdeaux, to enter duly all the Tobacco, which he and his Ship's Crew have on board, as that in France must be done to prevent the Misfortune that by secreting the least is to be expected.

VI.

The Captain shall have to observe, that being come near to the Island of St. Domingo, he must make no other Port but that of St. Marc, Port au Prince, or Leogane, except he should be obliged, by very urgent Distress, to chuse another Port, Bay, or Road ; as

the Passport of the King of France, which the Captain shall receive at Bourdeaux, doth not name any other but those Three Places, *and the making of any other Places at St. Domingo might possibly occasion the Confiscation of the Ship and Lading*, therefore the Captain is to observe that St. Marc is the first Place of his unlading at St. Domingo, wherefore he must sail directly thither, and being there arrived, he must address himself immediately to Mr. Bonfils, and deliver to him the Letter, or Letters, which he has received for him at Bourdeaux, as also the Letter of Recommendation of Messrs. Edward Bouwer, Father and Son, of this City, to him: In Consequence of this last Letter Mr. Bonfils shall assist the Captain in every thing it shall be required; as also furnish him the Moneys which by the Captain shall be demanded of him, for the Use of the Ship, for which he must give to Mr. Bonfils a Four-double Receipt, to be here accounted for Messrs. Edward Bouwer, Father and Son, and us.

VII.

The Captain must likewise, as soon as the Ship is arrived at St. Marc, shew the Passport of the King of France, to the Governor-General, and to Mr. the Intendant, by Virtue whereof the Ship shall be admitted there, and the unlading of the Cargo, and also the Lading of the Merchandizes in Return, be permitted for the shewing of the Passport,

L which

which the Captain carefully must keep ; it shall be necessary that *he in Person travels* from St. Marc, to Port au Prince, to exhibit the same there, with his own Hand, to the Gentlemen Governors and Intendants ; in the mean while, the Captain must also, at his Arrival at St. Marc, concerning this Passport, and the Admission of the Ship and Lading, take the necessary Measures ; to that End, Mr. Bonfils shall inform him of every thing, in what Manner it must be managed there, not to come in any Difficulty ; and at Port au Prince the same shall be done by Mr. Beauchamp, for whom the Captain has also a Letter of Recommendation, and a Letter of Credit, in the same Manner as to Mr. Bonfils, at St. Marc : The Letters which he shall take along with him from Bourdeaux to Mr. Beauchamp, he must deliver them at the same Time to him, with his own Hand, when he goes the first Time to Port au Prince.

VIII.

The Passport of the King of France is signed on the Date of the 28th of October, 1757, and is for the Space of Twelve Months, to be reckoned from the Day the same is signed ; and therefore the Captain must avoid all Delay on his Voyage, as much as is possible ; that the Ship, within the ending of that Time limited in the Passport, be returned back again here, or at least be departed

parted from St. Domingo; in case, however, any Adversity happened, in going out Voyage, which retarded the Arrival at St. Domingo, the Captain must take care to make the necessary Declarations, and authentic Protests, either of the Detention, or otherwise, at the Place where this Retardment, or Detention, happened to be; a Bill to prove, at St. Domingo, that he has not neglected the Time, either in touching at Ports, or otherwise, but by *urgent Necessity*: These Declarations, and Protests, must also be confirmed by Two or Three of his chief Officers.

IX.

The Captain must, at St. Marc, deliver out to Mr. Bonfils, so many, and such Articles of Bourdeaux Lading, as he shall require; and to receive of him again all such Merchandizes as he shall have to lade; and it shall be in his Choice to keep the Ship there so long 'till the Goods in Return shall be shipped by him, or to do it after the Ship shall have been at Port au Prince, and Leogane, or at Port au Prince alone; in this Case the Captain must, in back Voyage from Port au Prince, or Leogane, touch at St. Marc, to lade the Merchandizes of Mr. Bonfils.

X.

The Goods that must remain at St. Marc, being there unladen, and as soon as the Captain can depart from thence with the Ship, and the Remainder of the Cargo, either with

or without Goods to be laden at St. Marc, in Return he must sail from thence to Port au Prince, and address himself, with the Remainder of the Bourdeaux Cargo, to Mr. Beauchamp there, which must be delivered out to him; in case the Captain had not been before at Port au Prince, he must then immediately deliver the Letters to Mr. Beauchamp, and observe his Orders in every thing concerning the unlading and lading, whether the Ship must sail to Leogane, or at Port au Prince unlade the Remainder of his Lading, and be laden again there; provided not to be allowed more than 141 lying Days, those of Bourdeaux comprehended therein, according to the Charter-party.

XI.

For to lade the Ship at St. Domingo, whether the same must sail to Leogane, or not; the Captain must hire a proper Bark to fetch the Lading therewith, at the usual lading Places, and to convey the same on board of the Ship: Mr. Beauchamp shall give him the necessary Instructions concerning the same, and perhaps can let to him *the Bark which Messrs. Edward Bouwer, Father and Son, have sent to him to keep at their Disposition.*

XII.

The Captain must, at his Arrival at St. Domingo, immediately also give Notice thereof to Mr. Danié l'ainé dwelling au Troubordet, in the Quarter of Port au Prince, on

on the Plantation of Mr. Robiou; and, in case he should be dead, sick, or absent, or other Impediments, then Notice must be given to his Brother Mr. Danié lejeune, dwelling in the Quarter of Belleové, in the District of Port au Prince, on the Sugar Plantation of Mr. Pierre Banduy, as the one or the other of these Gentlemen Danié, shall have the greatest Part of the Lading to ship in return: The Captain must council with Mr. Bonfils at St. Marc, and with Mr. Beauchamp at Port au Prince, concerning every thing, in what Manner he must further manage these Affairs, as these Gentlemen shall also have the necessary Instructions from the Freighters, Messrs. Edw. Bouwer, Father and Son: Thus the Captain shall in every thing observe their Orders, in the unlading and lading, as also to sail to Leogane, in case they think it proper.

XIII.

The Captain must, at St. Domingo, take on board of his Ship, from the Correspondents of the Gentlemen Freighters, all such Merchandizes as they shall think proper to ship, 'till she is full and properly loaded, and duly to stow all; when there shall be Cotton laden he shall be at Liberty to screw it.

XIV.

In case Mr. Bonfils, at St. Marc, and Mr. Beauchamp, at Port au Prince, should be deceased, the Captain shall apply there to, that is to say, At St. Marc, to Messrs. Drouin, Pompon,

Pompon, and Comp. At Port au Prince to Messrs. Parageau, Rousseau, and Comp. to that End he shall also receive at Bourdeaux, Two Letters of Recommendation to these Two Houses, of which, however, he must make no use but in case of Death of the Gentlemen Bonfils and Beauchamp, or of one of them, as when he must make use of one or of both of these last Letters of Recommendation, and behave in such manner towards him who succeeds the Deceased, as here we have mentioned of Messrs. Bonfils and Beauchamp.

XV.

The Captain shall also observe to bring back, besides the Passport of the King of France, a Certificate in a due Form of the Officers of the Admiralty of St. Marc, of Port au Prince, seen by the Governor and Intendant, to prove *the Day the Ship came, or arrived at St. Marc.*

XVI.

The Ship at St. Domingo being laden, and intirely ready, the Captain shall proceed on his Voyage back; and in case the Return should happen in a proper Season, he must set his Course behind Scotland, and thus prosecute his Voyage to the Texell or T'Ulie; in case though the Season should be too far spent to sail by North Scotland, he must manage according as the Circumstances appear to him to be best for the most Security of

of the Ship and Lading, to sail directly to the Channel, and thus to prosecute his Voyage to the Texel, or to keep his Course to Cadiz or Lisbon; we leave that to him to manage that, according to the Circumstances, and act therein as it shall appear to him to be best, and the most secure.

In case he should run to Cadiz or Lisbon, he must wait there for *a Dutch Convoy*, and acquaint us immediately with the Post, of his Arrival there, as also what Information he receives there of a Dutch Convoy, that we might be able to give him our Orders concerning his further Destination for this City.

In case there is no Convoy immediately at Cadiz or Lisbon for the Texel, in this case he must lay so long at the Place where he shall be arrived till he has our Answer; but finding immediately Convoy, he must profit thereof, and prosecute his Voyage therewith to the Texel.

In case it happened that the Ship, on her returning back Voyage, should be met by English Men of War or Privateers, and the Captain should be obliged to declare from whence she came and whither bound, so as also the further Circumstances concerning the Lading, the Captain (being thereto obliged) must declare the Matters as they are, that is to say, that he comes from St. Domingo bound to Amsterdam with a Lading

for Dutch Account here, by us thither freighted, being to the Gentlemen Ed. Bouwer Father and Son, as the *Papers* also will shew; that however *secretting his Intent to run into Cadiz or Lisbon, or behind Scotland, when he is so far in Sea that the English of themselves cannot perceive it.*

The Captain is specially commanded to write to us by all Opportunities, as well his Arrival at Bordeaux, by the Post by Land and not by Sea, as also his Arrival at St. Domingo and his Occurrences there, his Departure from thence back again; the Writing from St. Domingo must be done by the Way of Curacao, *New England*, France, or direct to here, as the Opportunities shall offer: In case it is done with French Ships, the Letters must be enclosed in a Cover, and upon that Cover be directed to Messrs. Ed. Bouwer at Amsterdam; in that manner we shall receive the Letters best; but about the Cover directed to Messrs. Ed. Bouwer Father and Son, the Captain must put another Cover, and direct that thus; in case it be for Dunkirk, then to Mr. Charles Nottlebaert; for Havre de Grace, to Messrs. the Widow au Daniel Peray and Dangerard; for Nantes, to Messrs. Strughman, freres; for Rochelle, to Mr. Tresahar Bonfils; for Marseille, to Messrs. Pierre Honore Roux and fils; with request to forward them immediately after Receipt to Messrs. Ed. Bouwer Father and Son: the Captain

Captain must also observe to put the Names of the Merchandizes, the Places, &c. in his Letters not otherwise than thus:

| | | | | |
|--|---|---|---|---|
| To denominate St. Marc must be used the Letter | — | — | — | M |
| Port au Prince, | — | — | — | P |
| Leogane, | — | — | — | L |
| St. Louis, | — | — | — | S |
| Cape Francois, | — | — | — | F |
| Ryndert Everts Johannes, | — | — | — | R |
| Sugars, | — | — | — | Z |
| Indigo, | — | — | — | Y |
| Coffee, | — | — | — | C |
| Cotton, | — | — | — | W |

XVIII.

In the River of Lisbon, in case the Captain should come there, he must take the necessary Care concerning the Tobacco he has on board of the Ship, either in his, or in the Custody of the Crew of the Ship, and to deliver it there, to avoid the rigorous Punishment they inflict when secreted.

XIX.

In case Captain Ryndert Everts Johannes should happen to die on the Voyage, then the chief Mate, Peter Hanse Bakher, shall succeed in his Place as Captain of the Ship; and he also dying should be succeeded by the Second Mate, Paulus Nuring; and the further Officers shall advance according to their Station, and in the manner as by the Captain shall be judged proper, according to the Ability

lity of each : And it is specially commanded by us, that those who shall succeed one that is deceased, shall mind every thing of his Employment and Duty, and take care of the Matters of the Ship, and the Interest of the Owners, with all Diligence and Observation, in the same manner as it was the Duty of the Deceased : The chief Mate, the further Officers, and the Sailors, shall assist the Captain on Shore, and on board of the Ship, in every thing he shall want their Assistance, and execute his Orders concerning navigating with the Bark at St. Domingo, as otherwise.

XX.

The Captain must keep an exact Journal during the whole Voyage ; as also a Pay-book, in which each Person of the Ship's Company must have a separate Account, that it may appear, if any of them should die, the Day of his Death, and to what Day his Month by Wages have run ; and the Goods, and further Property of the Deceased being sold, before the Mast to the highest Bidder, the Buyers thereof must be debited for the same, each of them, on their Account, for as much as they buy ; and the Account of the Deceased must be credited for the whole, with the Signature of the Captain, and Two or Three of his Officers ; to be always capable to shew what the Deceased had left, and how much it has produced.

XXI.

The Letter of Credit which Messrs. Edward Bouwer, Father and Son, have given in favour of the Captain, must serve him, in case he should be necessitated to run into one or other Port, to the end he might receive there the necessary Moneys for the Use of the Ship; mean while we recommend him to be sparing in every thing, as much as possible.

We lastly do recommend to the Captain, the utmost Dispatch, Attention, and to manage according to the Circumstances for *the Interest of the Owners.*

Is signed

GERRET BECKERING.

I, underwritten, do promise to observe the foregoing Instructions in all Parts, and to behave myself accordingly.

Amsterdam, the 15th of
December 1757.

Is signed

RYNDERT EVERSZ JOHANNES SON.

Secret Instructions and Orders.

According to which Captain Ryndert Evertsz Johannesz, commanding the Fly-Boat called the Resolutie, bound with a Lading of

M 2 sundry

undry Goods, for our Account and Risque, from Bourdeaux to St. Marc, Port au Prince, and Leogane, in the Island of St. Domingo, and from thence with a Lading of Sugar, directly for this Place.

ARTICLE I.

The Ship being arrived at Bourdeaux, the Captain must apply to Messrs. J. C. Harmensen and Son, and deliver to them our Letter of Recommendation, by Virtue of which these Gentlemen shall assist the Captain and the Ship in every thing that is necessary.

II.

The Captain must, at Bourdeaux, receive of the said Gentlemen Harmensen, on board of his Ship, after it shall have been put in a proper Condition, all such Goods as they shall think proper to lade on board of her, 'till she shall be full and properly laden, and must thereof by the Captain be signed the following Bills of Lading.

| | |
|--|---|
| ^{1st Set.} <i>False.</i> ^{2^d Set.} <i>True.</i> | { From Bourdeaux directly to this Place. { From hence directly to Curacao. { From Bourdeaux directly to St. Mare, and Port au Prince, in the said Island of St. Domingo. |
|--|---|

III.

At Bourdeaux the Captain must take a proper Proof from Messrs. Harmensen, of the lying Days employed there, that he might shew that at St. Marc to our Correspondent.

IV.

In case Messrs. Harmensen might think proper to send a Person along to St. Domingo, as Writer, or Interpreter, the Captain shall be obliged to lodge him in the Cabbin, and supply him with the Ship's Provision and Drink, without having any thing for his Passage; but, if he should desire something extraordinary, that shall be for Account of that Person; the Captain shall be obliged to put him on the Muster-roll, and cause him to sign his Name thereon, under the Names of the other Ship's Company; but besides this Person he shall not take any other on board, neither at Bourdeaux nor elsewhere; and also no other Merchandizes but such as are named in the Passport of the King of France, which he shall receive at Bourdeaux, that being prohibited, on Penalty of the Ship and Cargo.

The Ship being laden at Bourdeaux, and ready to depart, the Captain shall, in case the Wind be open for Hyzant, sail from Bourdeaux directly thither, and hold in Readiness his Bill of Lading for this Place; to shew the same to the English Men of War, Privateers, or other Ships, in case it be necessary; being come to near the Height of Hyzant, he must alter his Course, and at the same Time tear, or throw over board, the Bill of Lading for this Place, altering his Course directly

directly to St. Marc, on the Island of St. Domingo, and, meeting with English Men of War, when it is required, declare himself to be bound to Curacao direct from here: As the Bill of Lading to that Place must be shewn to them, in case they should desire it, as also our Letter to Mr. Jan Rudolph Faegeh, at Curacao, these Papers, and also these which the Captain has received here of the West-India Company, for Curacao, he must also keep in Readiness so long, 'till he arrives at St. Domingo, but not shew them but when they are demanded; all the Letters and Papers for St. Domingo he must carefully at Bourdeaux, in a Tin Box, bide in a Secret Place in the Ship, and not bring them forth but on his Arrival at St. Domingo, that even his Ship's Company might not know any thing of it; if the Captain, however, should fall sick, and in Danger of dying, (which God forbid) then he must make it known to him who, after his Death, must command the Ship.

VI.

In case the Wind, after the Departure from Bourdeaux, should not be fair for the Channel, then the Captain must chuse the nearest Way to get out of the Bay of France, and thus prosecute his Voyage to St. Domingo, but to keep the Bills of Lading for this Place, so long 'till he be out of the Bay, as when he must put those Bills of Lading out of the Way, and keep at hand those to Curacao.

VII.

VII.

The Captain must not run into any other Port of St. Domingo, than first at St. Marc, further sailing to Port au Prince, or Leagone, in case our Correspondents at St. Domingo think proper to let the Ship also sail to the Place last mentioned in the Passport of the King of France, and *all other forbid.*

VIII.

Being arrived at St. Marc, the Captain must apply there to Mr. Bonfils, and deliver to him the Letter, or Letters, which he has received for him, as also the Letter of Recommendation, in which we desire Mr. Bonfils to assist the Captain in every thing, and to furnish him with the Moneys that for the Ship's Use might be required, as far as the Sum of Four Thousand Livres, French Money, on the Captain's Four-double Receipt.

IX.

The Captain must also at his Arrival at St. Marc, shew the Passport of the King of France to the Governor-general, and to the Intendant, or to those who shall represent them: Mr. Bonfils shall inform the Captain, in what proper manner that may be done, as also judicially give Notice of the Arrival of the Ship to Mr. Danié junior, dwelling in the Quarter of Belle-rue in Port au Prince, on the Sugar Plantation of Mr. Pierre Baduy. Mr. Bonfils at St. Marc shall inform the Captain

tain of every thing what at St. Marc is to be done.

X.

The Captain must immediately on his Arrival at St. Marc cause the Letters to Mr. Beauchamp at Port au Prince to be delivered to his Hands in the securest Manner by Land ; Mr. Bonfils shall inform him in what manner that must be done.

XI.

The Captain must at St. Marc deliver to Mr. Bonfils so much of the Lading taken on-board at Bourdeaux as he shall desire to receive, and sail from thence with the Remainder to Port au Prince, to deliver it there to Mr. Beauchamp. Further he shall at St Marc, as well as at Port au Prince, observe the Orders of these Gentlemen concerning the unlading as the shipping again, either at St. Marc, Port au Prince, or at Leogane ; and deliver the Merchandizes with his own Vessel and Ships Crew at his Charge, and fetch the Lading in return in the same manner from Shore ; or cause the Ship to be moored at the usual Lading Places at St. Marc, Port au Prince, or Leogane ; observing in every thing the Orders of Mr. Bonfils at St. Marc, and of Mr. Beauchamp at Port au Prince : for which last Gentleman we have also delivered to the Captain a Letter of Credit, the same as that to Mr. Bonfils which he must then likewise deliver to Mr. Beauchamp, to be assisted in every

every thing with his Councils and Deeds ; and in case one of the two or both these Gentlemen might be dead, then the Captain must make use of one or both the Letters of Recommendation which we have given to the Captain along with him ; that is to say,

To Mr. Parageau Rousseau and Comp. at Port au Prince, in case Mr. Beauchamp was dead.

To Mr. Drovin Pompon and Comp. at St. Marc, if Mr. Bonfils should be deceased, at the same time delivering them our other Letters to manage all the Matters in the Manner as Mess. Beauchamp and Bonfils, should have done.

XII.

The Captain must take care at his Return to bring us an Account and a proper Proof of the lying Days employed, as well at Bourdeaux as at St. Domingo.

XIII.

The Passport of the King of France, which the Captain shall receive at Bourdeaux, must the Captain carefully *keep with the other secret Papers*, to *deliver it to us again at his return*; *which at Bourdeaux he must promise the same under his Signature.*

XIV.

In case any Mischance should happen in the going out Voyage, which should retard the Arrival of the Ships at St. Domingo till after the Elapsion of the 12 Months granted in the Passport of the King of France, then

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the Captain must shew at St. Domingo the necessary Declaration and Protests of all the Misfortunes which unavoidably have occasioned Retardment, either that he is detained, or has met with other Obstacles ; the Proofs must shew that the Captain *has not made a bad use of* the 12 Months that have been granted *with touching at other Ports*, without necessity : But in case he cannot avoid it, he must make his Declaration before the Admiralty of the Place or Places where he touches, and mention the Reason in the same of his touching there. These Declarations must be confirmed by two or three of his Chief Officers ; he must do the same in case he should be detained or be brought up by any English Man of War or Privateer.

XV.

The Captain must also bring us back a proper Certificate from St. Domingo, of the Officers of the Admiralty, seen by the Governor and Intendant, to prove on what Day he was arrived at St. Marc.

XVI.

Of *all* the Merchandizes which at St. Domingo *with the Bark* or other Vessel shall be unladen or be laden, the Captain or other Officer who shall command that Vessel must sign a Bill of lading or * Manifest ; in which must be inserted, that the Merchandizes are for

* Vide the Letter following.

for Account and Risque of Mess. Ed. Bouwer
Father and Son of Amsterdam Merchants.

XVII.

The Captain must also bring us back from St. Domingo a proper Certificate from Officers of West-India Dominions, of Port au Prince and St. Marc, seen by the Commandant or Commissary of Marine-matters, to prove that there are unladen the Goods that are shipt at Bourdeaux, the State of the Lading duly certified by the Officers of the West-India Dominions at Port au Prince and St. Marc, (or only by those of Port au Prince, if the Ship receives her intire Lading there) of all the Merchandizes that shall have been laden in the Ship for this Place.

XVIII.

Of all the Merchandizes the Captain shall lade at St. Domingo for this Place, he must sign Five Bills of Lading, of the same Tenor ; and therein must be inserted, that they go to the Consignation and for Account and Risque of Messrs. Edward Bouwer, Father and Son, of Amsterdam, Merchants, and the Freight to be paid here according to the Charter-party signed between the Captain and us.

XIX.

In case the Captain Ryndert Evertsz Johannesz should die, all the foregoing must be observed by him who in his room shall command the Ship as Captain.

XX.

The Dispatches the Captain shall want from St. Marc must be put under those of Port au Prince.

XXI.

The Captain, before he departs from St. Domingo for this Place, must take a proper Proof of the Duties that must be paid going out from St. Domingo, and bring us back this Paper, as also an authentic Proof of the Day he shall have been dispatched there to depart for this Place.

XXII.

In case the Captain should write any Letters from St. Domingo, either to his Owners or to us, it must be done by the Way of Curacao, New England, or directly to this Place, according as the Opportunities shall offer ; in case it be with *French* Ships the Letters must be directed as follows ; if it be to Dunkirk, to Mr. Charles Nottlebaert ; to Havre de Grace, to Messrs. the Widow and Daniel Peray and Dangerard ; to Nantes, to Messrs. Strughman, freres ; to Rochelle, to Mr. Thresaharbon fils ; to Bourdeaux, to Messrs. J. C. Harmensen, & fils ; to Marseilles, to Messrs. Pierre Honoré Roux, and Son ; desiring to forward them immediately to this Place.

The Captain must put in his Letters the Places, the Names of the Merchandizes, &c. not otherwise but in the following manner :

To

| | | | |
|--|---|---|-----|
| To denominate St. Marc he must put the | | | |
| Letter | — | — | — M |
| Port au Prince, | — | — | — P |
| Leogane, | — | — | — L |
| St. Louis, | — | — | — S |
| Cape Francois, | — | — | — F |
| Ryndert Everts Johannes, | — | — | — R |
| Sugars, | — | — | — Z |
| Indigo, | — | — | — Y |
| Coffee, | — | — | — C |
| Cotton, | — | — | — W |

Amsterdam, Dec. 31, 1757.

Is signed,

ED. BOUWER, Father and Son.

Extract of a Charter-Party, dated November 5, 1757.

It is further agreed upon, that in case contrary to Expectation, it should happen that before the Ship from hence went to Sea, the Difference between England and France should be adjusted, or a Cessation of Arms should be concluded, the said Ship *should put a stop to this intended Voyage*, and that in that case, by the Gentlemen Freighters shall be paid the Sum of Fifteen Hundred Guilders, Dutch Money, once without more to the Gentlemen Owners of the said Ship, to keep them harmless for the Charges they have been

been at. *Thus done at Amsterdam, in the Presence of JEAN MORRIN, Jun. and JACOBUS DALIUS, as Witnesses.*

Quod attestor,
H. DE WOLFF, *Not Pub.*

Extract of a Letter to Mr. Danié, Sen. and in default of him Mr. Danié, Jun.

Paris, the 7th of March 1758,
SIR.

You will find herewith the Contract passed the 25th of last Month, with Mr. Montz, Merchant in Paris, in the Street of St. Andre des Ares, to whom I have procured a Licence from the King, to send a neutral Ship to St. Marc, Port au Prince, and Leogane. Captain Ryndert Everts J. Johannis, is the Bearer of the Passport.

The Contract contains the Sale of 300 Thousand Weight of Sugar Terré, and of Five Thousand Weight of Indigo: Mr. Montz is also obliged to deliver you the Merchandizes contained in an Invoice, herewith approved by Mr. Beudet, our Friend, altho' he, for Reasons which it is easy for you to judge, and *which require strict Secrecy*, is not employed in the Contract *which is his doing*. I have agreed, 1st. that one Half of the Pacotille, or small Venture, amounting to 8000l. French Money, shall belong to him; 2dly. That in the

said Sale of American Commodities, there should be Seventy-five Thousand Weight of fine Sugar, further Fifteen Hundred Pounds Weight of Indigo, about which you are to receive his particular Orders, the 225 Thousand Weight of Sugar Terré, there remaining; only the Three Thousand Five Hundred Pounds of Indigo, over and above, and one half of Parcel, are for *my own sole Account*. It is indispensably requisite that you fulfil the Bargain entirely, *every one of the joint concerned is in the most extream Necessity*. There is not a single Resource of raising Money in France; the Multiplicity of our Engagements in Europe, where we cannot put off Creditors beyond a certain reasonable Delay, requires your Zeal to make the greatest Efforts. There is no Means left to make Contracts in any wise with neutral Persons, since the English take them. This Contract is only the Consequence of a Bargain made under private Hands with Mr. Montz, ever since the 14th of August.

One cannot hope of assuring ones self for the Returns from America, no Overtures nor Disposition towards Peace; therefore lay hold entirely of the present Means to send us Funds sufficient to support us until the End of the War; it will perhaps be the last Opportunity you will have in Hand. There is not in France a more solid Merchant or Banker than Mr. Montz, *and tho' he appears in*

in the Contract to stipulate for and in the Name of Mr. Antoine Bouwer, of Amsterdam, whose House is one of the best in Holland, *he has bound himself separately* in and to the whole, by a separate Act; a Copy of which is herewith: So that all the Acknowledgments which will be given you, agreeable to the 7th Article, is sure Money, paid in Paris. You will get separate ones to be given you for what regards Mr. Beudet, and Conforts; and it will be sufficient that you put at the Foot of the Declaration, that the Sum belongs to, &c. for whom you paid the Value, and in that manner there will be no Confusion, because you will direct to every one what belongs to him. It is necessary that, on reading this Letter, you should have the Contract at Hand; and you will find here some *Eclaircissements or Explanation* upon those Articles which may have Occasion for it.

We had some Room to believe that Peace, or some other Event, would make the Bargain disadvantageous us, and we would retain Liberty to ourselves not to perform it; this particular Favour was due to the Passport which I promised, *at a Time when* the Ministry did only grant *Four or Five Favours* of that sort; a Favour which could not fail of rendering immense Profit to the Fitters-out. It is Mr. Montz' Fault if he did not dispatch a Ship ever since September last, *a Time when*

when the small Number of neutral Ships, *and the extream Necessity of the Colony would* have procured a Sale of 4 or 500 per Cent. Profit upon the Cargo of 100,000l. which he sends to St. Marc,

If the Ship should not arrive within the Time limited by the Passport, and that the Captain should meet with any Chicane, you will join with Messrs. Bonfils of St. Marc, and Beauchamp of Port au Prince, to whom the Ship is consigned, to obtain his Admission of Messrs. the General and Intendant; they have some Kindness for me, and here are Letters which I write them. The Passport was delivered at Versailles the 5th of October, but the Ship could not get to Bourdeaux, in Ballast, until the End of January, where she was to receive her whole Cargo *in Merchandizes of France*; a Circumstance very favourable, and which deserves a great deal of Regard from the Superiors.

As soon as the Ship arrives you will advise us of it by all Opportunities, and acquaint us with what there is to be depended on; and at this present Time there should be Sextuplices Messrs. Thomas and Adrian Hope, in Amsterdam, to whom you may address my Letters, either directly or by the way of Curaçao, will carefully send them to me.

You have bought for Mr. Bautin some White Sugars of the first Quality, upon the Foot of 14 Tournois the Hundred; as there

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are no more French Ships going to St. Domingo, and that Neutrals refuse going those Voyages, as the English seize upon every thing, and adjudge them good Prize; it is probable that you may have fine White Sugars at 12 or 13; Indigo will have fell in a like Proportion; Money also will not be dear, neither with those who shall want to remit. Mr. Beaudet remembers to have negociated Paper upon France, from 40 to 80 per Cent. Exchange, in the former War; the Course was then 50 per Cent. The Point is to look out for People that are pressed to make some Remittances; it should be proposed at Leogane, Port au Prince, Cul de Sac, Petit Goave, St. Marc, at the Extremity of the Island, at Vache, and even at the Cape at Jacmer; try the Merchants who may be teased by their Principals of France, also those Inhabitants who have their Wives and Children to maintain there. Several others would lay hold of the Opportunity of making Remittances at a Time wherein almost all Ways are shut out, Mr. Beudet, who is *to remain incognito* in the whole Affair, will add to this what he will have to say to you in particular concerning the 75 Thousand Weight of Sugar Terré, and the 1500 Pounds of Indigo assigned to him.

Here are a great many new Points I impose upon you, but from them depend the Means of testifying to you shortly my Acknowledgement;

ment: it should have shewn itself sooner by Methods not equivocal, if the Debts in France, the Discharge whereof presses so much, and the Failure of Remittances did not keep me under an Incapacity, from which I infinitely long to be freed.

Sir,

Your most humble
and obedient Servant,

NOLIVOS.

CONCLUSION.

As nothing is more obvious than to charge with false Facts in private Conversation any Arguments that cannot conveniently be answered in a public manner, it has been thought adviseable, by publishing the above authentic Papers extracted from the Registry of the High Court of Admiralty, to free the Reasonings advanced in the foregoing Considerations, from the least Insinuations of Falsehood, as to the Facts on which they are grounded.

The Errors in the Translation of the Dutch Placarts in former Editions are corrected in this.

There was a great Difficulty to find out any Person of Letters who understands with Precision a Language, so uncertain in its Grammar and Meaning as the Dutch Lan-

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guage is said to be, and which is scarce spoke even in Dutch Families of any Fashion, unless to very mean Servants. It was natural therefore to expect Errors in the Translation, and the Dutch Original was printed for no other Reason whatever than that such Errors, if they should happen, might be discovered; and lest any one should pretend that there was a Design knowingly to misrepresent the Truth, and to deceive the Reader; a Design unnecessary to that Cause which is best supported by Truth alone.

After these few verbal Corrections there will remain Words enough to condemn the false Practices of Dutch Subjects by the Decisions of their own Country.

The Facts being now established beyond Dispute, and the whole Argument stated in a very short Series, upon the Footing of a mercantile Account, the Ballance may very easily be determined by any Reader as to the Question of Right: The Method of treating the Subject by Positions which arise one out of another in every distinct Argument, is as obvious, from its Form, to be refuted, either as to Part or to the Whole, as it is to convince.

If fortunately it should be judged to have had the latter Effect in any one Argument singly, or jointly, it is to be hoped that it will compensate for a manner of Reasoning unentertaining in its Nature.

But

But if Foreigners, or any other Persons at Home connected with Foreigners, are offended with the Contents, they *ought* certainly to excuse in another Person a disinterested Desire to lay before his Country, and the World, those Facts which it was their Interest to have had concealed or argued upon in a different manner.

Observations concerning the Meaning of the Word Vallende, translated in the Pass of the Dutch West-India Company “Produced.”

The greatest Proof which any Translation is capable of, in order to ascertain its Truth and Fidelity in transferring a Word in one Language into a Word of another Language, so as to preserve the same Ideas pure and unmixed, is that Proof which arises from standing Authorities, and which are universally allowed.

The first Authority is that of Dictionaries in two Languages, which give you one Word for another, with its various Meanings, and which add a Number of Phrases or Sentences to support those various Meanings: But as the Dictionaries of modern Languages do not cite their Authorities, which is the Method of the best Dictionaries of the Greek and Roman Language, so they are also often deficient in not giving *all* the Meanings of a Word,

Word, or if they give a Meaning they leave it uncertain, as to its Authority, from Authors of approved Character ; the Writings of such Persons, therefore are the last and highest Authority ; and the true Criterion of the Sense of Words is the Context, or Connection of other Words in the same Language which *necessarily* fix and determine positively and precisely the Meaning of another Word which forms a Part of the same Sentence and Construction. Let it be agreed that the Words going before or after any Word in question have a certain given Meaning, it will follow necessarily, that the Word in question has in its Connection a precise Meaning, which can *only* there be so understood, and in all other Cases similar ; and no Doubt can arise, but that a Word is faithfully translated, when the Context proves that it is so ; and when the whole cannot be intelligible or probable if any other Sense is affixed to the Word in question.

In Proof that Valt, Vallen, Vallende, in the Low Dutch Language, where these Words are connected with Places, signify *produced*, or *growing there* ; the following Instances are selected from many others, in an Author whose Work has passed Six Editions ; Johannes Hubner's Explanatory Dictionary of Arts and Sciences, and of all Denominations

tions in the natural Kingdom; with their Meanings. Printed at Leyden, 4to. 1734.

Fol. 387, Col. 2. Speaking of Wines, and of the Places of their Growth,

De Frontignac, die in Languedoc, omtrent de Stad Frontignan *valt*. Deze aangezien hy veel naar Lion, en van daar verder vervoert word, word ook Muscat de Lion genaamt.

The Frontignac which *grows* in Languedoc near the City of Frontignan; as the same is much conveyed to Lions, and from thence farther, it is also called Muscat of Lions.

Ibid. Treating of Rhenish Wines, having mentioned the Rudesheimer as the best Sort, he says,

Naast dezen den Johannesberger, en die tuschen Erpach, Hattenheim en Markbrun *vallen*.

Next to that is the Johannesberger, which *grows* between Erpach Hattenheim, and Markbrun.

Ibid. Of Moselle Wines.

De best zoorten *vallen* omtrent Dustemunde.

The best Sorts *grow* near Dustemunde.

Fol. 285, Col. 1. Of the Shrub Ephedra.

Dit gewas *valt* veel op een steenagtigen grond en aan Zee in Languedoc in Provence.

This Shrub *grows much* in a stony Soil, and near the Sea in Languedoc, and Provence,

Ibid.

Ibid. Of a Third Sort of the same.

Dit gewas *valt* in Languedoc, niet verre van de Have Cette, by Frontignan.

This Shrub grows in Languedoc, not far from the Port of Cette, near Frontignan, in stony Places situated near the Sea.

Fol. 119, Col. 2. Of Blood Stones.

Die in Duitsch land *valt* is wel rood.

Those which grow or are produced in Germany are very Red.

Fol. 17, Col. 1. Of Manna.

Aeromeli is een Manna, hoedanig veel in Calabrie *valt*.

Aeromeli is Manna, of which much grows or is produced in Calabria.

Fol. 3, Col. 2. Of Apes.

In China *vallen* Aapen.

In China are produced Apes.

William Sewel's English and Low Dutch Dictionary.

Fol. 529. Daar sal dit Jaar wynig Graan in dat gewest *vallen*.

The Translation of which, according to the true and usual English way of speaking, is,

There will be but a small *growth* of Corn in that Country this Year.

He says, This Harvest will *yield* but little Corn in those Quarters.

From the above Observations and Authorities, it is beyond Dispute, that the Dutch Traders

Traders have no Permission from their own Company, to lade their Ships but with such Goods only at their Islands in the West-Indies, as are the *Growth* and *Product* of them.

If it should be said that the Word *Vallende* cannot in its Relation to the *Place* signify *produced* when the Permit is for Eustatia or Curacao, because *there is nothing there produced*; and that the particular Nature of those Islands opposes the common Construction of the Context of the Words in question, notwithstanding that it is owned that it would be the proper and natural Sense, if the Permit was for any other Dutch Colony:

The Reply is obvious.

This is the antient Form of the Dutch West-India Pass for Surinam; when Eustatia and Curacao were scarcely considered as Dutch Colonies. The unlawful Trade carried on there, of a much later Date, in Time of Peace, and the Contraband one in Time of War, were no Objects of this Form.

But suppose that we join in the Construction, then the Dutch Traders own the Fact, "*Eustatia and Curacao produce nothing*," and therefore the Word *Vallende* signifies relatively to them, only, "*what is brought thither*."

What is the Consequence? only this; They do not act contrary to the Laws of their own Government, which we say they do: but, they confess what we principally charge

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upon them, the Fact ; they act contrary to the Law of Nations ; they make their Islands the Repository and Channel thro' which they convey the Product of the Enemy, and prolong the War.

The Extracts from the Original Papers in the Registry of the High Court of Admiralty are attested as follows :

Faithfully translated from the Original Papers, London, June 24, 1758.

Quod attestor,
ISAAC KUYCK VAN MIEROP.

Not Pub. 1758.

F I N I S.

E R R A T A.

Article 1. p. 41. *For dan Vyand, read den Vyand.*

Article 2. p. 42. *For na ne zelve, read na de zelve.*

P. 47. *For gehoor faemheyt, read gehoorsaemheyt.*

Ibid. For honnen, read kunnen.

Article 1. p. 48. *For voortoen, read voortaan.*

For Ingesetenen, read Ingesetene.

P. 49. *For Regieringe, read Regeringe.*

For Gooderin, read Goederen.

For vat, read wat.

For oocke, read oock.

For Strickende, read Streckende.

For desen, read dese.

For en read een.

For Ingesetenen, read Ingesetene.

P. 50. *For Gooderen, read Goederen.*